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VIEWPOINT

Mr. Smoot Returns to Washington

A Look at the Laws and Powers in the Tariff Toolkit

JOEL SHPALL | AUGUST 8, 2018

There has been a flurry of headlines and news reports in recent months regarding the President's threats to impose tariffs against several U.S. trading partners. The tempo of these headlines has increased as the President moves forward with some of his trade policies. For example, we have now seen targeted tariffs implemented against China, which brings to light questions such as: what is the legal basis for such actions, and how far can the President go with this strategy? This note aims to provide some background and answers on those questions.

Where it All Begins: The Regulation of Trade and Commerce

Under the Commerce Clause of the U.S. Constitution, regulation and authority over international trade matters fall squarely under the purview and jurisdiction of Congress. The President may only regulate on specific trade matters where statutory authority has been expressly delegated to the President by Congress. The Supreme Court also mentioned in its tax ruling in the 1994 case of Barclays vs. California that the "Constitution expressly grants Congress, not the President, the power to regulate commerce with foreign nations."

So How is the President Able to Threaten Expansive Tariffs?

Over the decades, as Congress has adapted to a changing geopolitical landscape, it has incrementally delegated authority over tariffs and quotas to the office of the President. This has been conducted through a series of trade acts that delegate authority under specific circumstances and parameters to the President. When considered in aggregate, the various statutes grant a fair degree of flexibility on tariffs to the President, although it is debatable whether the spirit of the law intends for these to be used in combination.

Interestingly, the President may have more practical involvement with tariff increases (protectionism) than broad reductions or eliminations. The reason for this is that congressional approval is needed for elimination of tariffs, such as when entering into free-trade agreements. However, as described below, Congress has granted the President some specific trade powers over the decades in response to evolving geopolitical circumstances. For example, in the 1960s and 1970s, a handful of trade acts were passed by Congress, each delegating discrete trade authorities to the President. This came amid a backdrop of increasing international trade as well as the growth of the Cold War. Rationale for these new trade acts was to foster U.S. interests

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and trade abroad at a time when international influence was increasingly important, but also to react to what might be deemed unfair competition or threats by other countries to the American worker.

As a result, the President has been granted authority to act on certain trade issues without congressional approval, within certain parameters. Below is a summary of some of these trade statutes:

Section 232 of the Trade Expansion Act of 1962.

- Section 232 is a seldom used provision of the 1962 Trade Act that is designed to protect the U.S. from trading activity which poses a threat to U.S. national security. It grants the President significant authority to implement tariffs without congressional approval, but only when imports are deemed to pose said threat to U.S. security. Any tariff applied under this statute cannot be implemented immediately, as the administration must adhere to a formal qualification process. The Dept. of Commerce must first initiate an independent investigation into trade flows and their implications (this investigation can be requested by the administration or by industry participants). If and when the Commerce Dept. agrees to open such an investigation, it can take up to 270 days for this stage to be completed. Upon completion, Commerce will make a formal recommendation to the President, based upon its findings. The administration then has up to 90 days to respond. Thus, this process can take up to a year to complete, although it can be shorter.

- While historically seldom used, Section 232 has become one of the 'go-to' tools in the President's trade policy handbook. This is the statute used to recently implement steel and aluminum tariffs against several trading partners and is also being used to explore potential automotive and auto parts tariffs. It is worth underscoring that this law does not allow for immediate implementation of tariffs. In the case of the steel and aluminum duties, the Dept. of Commerce investigations were launched in April of 2017 (at the request of the President) and the investigations were not concluded with a formal recommendation until January of 2018. The administration then commenced its review process and did not formally implement the 25% steel and 10% aluminum tariffs until March 2018. Exemptions were initially granted to several nations by the President, thus many countries did not have formal steel/aluminum tariffs implemented until May 31 – more than a full year after the Sec. 232 investigation was initiated.

- In terms of the automotive industry, the administration requested a Sec. 232 investigation into the impact of imports on May 23, 2018. The following day, the Commerce Dept. formally launched the investigation. While we cannot predict the timeline of events, it is unlikely that tariffs will be implemented in the near term. Auto industry participants recently received detailed questionnaires from the department's Bureau of Industry and Security as part of the investigation process. The Commerce Dept. also recently concluded public hearings for this investigation on July 19, which illustrates that the process is moving forward, yet it could be at least a couple more months (perhaps longer) until the investigation is completed.

Section 301 of the Trade Act of 1974.

- Sec. 301 is another rarely used statute recently revived by the President. The law was originally designed as a way for U.S. exporters to gain entry into blocked or inhibited foreign markets (company 'A' asks U.S. Government to investigate why certain markets are not open to its export goods) before the WTO existed. This tool was used numerous times in the 70s as a means to open up foreign markets to U.S. trade, and then reprised numerous times under President Reagan more aggressively, but has been only used once since 2001.

- Similar to Sec. 232, this law imposes strict procedures and cannot result in immediate trade levies. A formal investigation into harmful acts by other countries must first be requested (by either the administration or an industry participant), with an independent investigation ensuing. Unlike Sec. 232, Section 301 is controlled by the USTR (Office of the U.S. Trade Representative) under Robert Lighthizer. Lighthizer (who also served in the Reagan administration) has been a consistent proponent of trade tariffs under the President.

- The President employed Section 301 to initiate the recent tariffs against China. Initially, 25% tariffs were implemented on July 6, 2018 by the U.S. on $34 bil of goods, with an additional $16 bil identified and potentially going into effect within a couple weeks. The administration has also threatened to levy 10% tariffs on $200 bil of additional goods from China (and threatening to raise the rate to 25%). It is worth highlighting that Sec. 301 is intended to protect U.S. companies against countries that are unfairly disadvantaging them (this can apply to 'currency manipulation' as well). Following an investigation that began in August 2017 and closed on March 22, the USTR concluded that China's intellectual property policies were indeed injurious to U.S. companies. Sec. 301 contains fewer statutory restrictions than Sec. 232, permitting trade tariffs that can be 50%, or even more, in some instances.

Section 122 of the Trade Act of 1974.

- This 'balance of payments' statute grants the President authority to implement tariffs of up to 15% (or quotas) for up to 150 days on countries with which the U.S. has a 'large and serious' balance of payments deficit. This 15% can be layered on top of other duties, but the statute provides a strict 150-day limit on such tariffs.

Section 201 of the Trade Act of 1974.

- One may recall that this statute is what President George W. Bush employed during his first term in office to erect trade barriers for steel. This was actually the first statute utilized by the current administration to support tougher trade restrictions in support of its America First trade policy. In May and June of 2017 the U.S. ITC opened investigations into solar cells/modules and washing machine imports to determine if these goods had significantly harmed U.S. companies. Unlike other current administration tariffs, these inquiries were initiated by the U.S. companies themselves, and by January of 2018 both these investigations were completed. They both resulted in USTR recommendations to implement protective tariffs on these imports – which the President quickly adopted. Over a three-year schedule, tariffs on washing machines will range from 20-50% in year one, 18-45% in year two and 16-40% in year three. South Korea has lodged a formal trade protest with the WTO in response to the U.S. actions, and is reportedly seeking sanctions in excess of $700M. For solar modules, the tariffs will adhere to a four-year schedule, with duties starting at 30% in year one and declining to 15% in year four.
- By revisiting President Bush's utilization of the Sec. 201 statute to implement steel tariffs in 2002, we might gain some insight into how this process may play out. The duties implemented by Bush ranged from 8-30% and went into effect on March 20, 2002. They were then lifted in December of the following year. President Bush implemented the tariffs in an attempt to protect the U.S. steel industry after several domestic steel businesses filed for bankruptcy, but as political and international opposition steepened, it ultimately resulted in the repeal of the tariffs two years before their planned expiration.

Section 338 of the Tariff Act of 1930.

- The infamous Tariff Act of '30, also widely known as the Smoot-Hawley Tariff, provides the President the authority to institute duties of 50% or more against countries that are deemed to be a threat to U.S. industries or labor. This is among the most aggressive pieces of protectionist legislation in U.S. history, and is considered by many historians to be one variable that exacerbated the Great Depression. This statute has not been utilized in recent times.

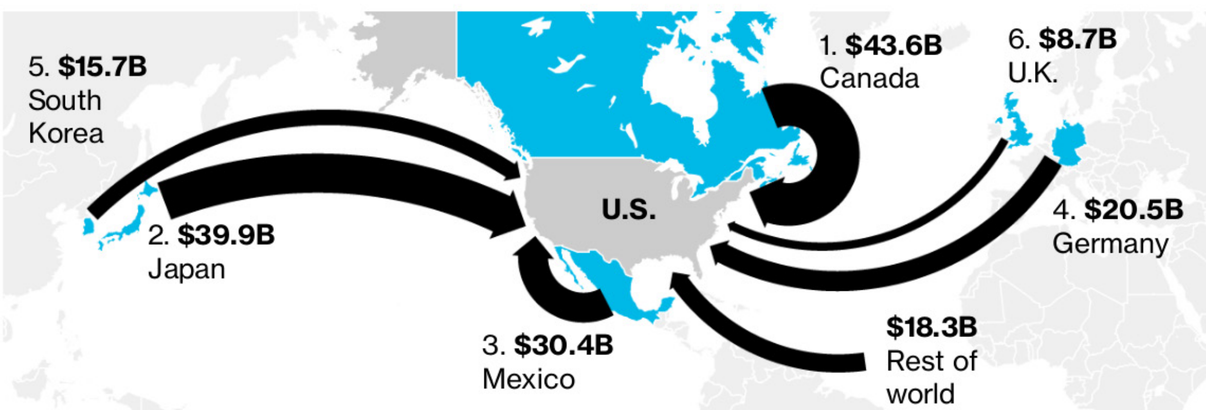
It is important to underscore that existing trade powers available to the President have not materially changed in recent years. What has changed is the President's more aggressive interpretation and usage of these trade laws. Many of these trade acts have been extended and renewed throughout the years but have not been relied upon extensively by prior administrations. While various of these laws have been employed from time to time, they have not typically served as a core aspect of the President's trade policy, as they are today. If we ask ourselves what is different this time around, we would suggest it is the President's liberal interpretation and employment of the existing statutes concurrently.

Additionally, while these statutes are being utilized more liberally by the current administration, they can also be rolled back immediately if the administration elects to do so. This is an important point, as the President has signaled that tariffs (or the threat of tariffs) should be used as a 'stick' to gain negotiating leverage against trading partners, and thus may be reversed if they produce favorable trade outcomes. We are already beginning to see this strategy and result play out in trade negotiations with the EU, which has now signaled it will increase its imports of U.S. goods in an effort to avoid an escalation in tariffs.

Meanwhile … The Private Sector is Beginning to Make Some Noise

As the President's trade policy has taken shape with increasingly aggressive tariff threats, stiffer resistance has begun to materialize on different fronts. Case in point, within the private sector opposition to the President's earlier tariffs on steel/aluminum and to the initial round of tariffs on China was relatively benign. However, that has changed with the pending threat of tariffs on the automotive sector. While there were some business and commercial objections to the steel and aluminum duties, there was relatively strong support for those trade barriers from constituents in Republican states and steel companies across the U.S. heartland. The specter of new automotive tariffs (and likely foreign retaliation), alongside potential disruption of the NAFTA status quo, brings a broader and deeper risk to the U.S. economy and private sector.

U.S. Light Vehicle Import Markets
2017 Trade Value: $177.2 Billion



Source: Bloomberg

To put the tariff numbers in context, the first and second round of Chinese duties will target $50 bil of goods in aggregate (only the first round of $34 bil is currently in place). The looming third round with China would target $200 bil of products. Yet these tariffs are dwarfed by the potential economic impact of broad auto tariffs. U.S. imports of light vehicles total approximately $200 bil per annum, yet there is virtually no vehicle in the $600 bil new car market that would be unaffected by import tariffs on autos and auto parts. As new car prices rise, auto manufacturers will have to adjust operations to match declining sales levels, and some plants may shutter, resulting in U.S. job losses. Automakers would feel the impact as well as companies throughout the supply chain and distribution channels, putting at risk some of the 4.25 mil U.S. workers employed in the automotive industry. Furthermore, auto tariffs would directly impact prices on consumer goods, unlike many of the initial tariffs handed down on Chinese goods.

Automotive Industry Employment in U.S. (000's of workers)

Source: Bureau of Labor Statistics, May 2018

As a result of the higher stakes associated with potential auto tariffs, opposition in the private sector has grown significantly across a large swath of businesses, including some with significant political ties – from auto dealerships to auto suppliers to manufacturers. GM has taken a leadership position to lobby against the tariffs, warning of its potentially harmful impact on U.S. companies large and small, potential loss of significant U.S. jobs and the risk of inhibiting U.S. technological leadership. BMW has stated it may need to downsize its U.S. presence and workforce and Toyota has added that it may need to move U.S. manufacturing to other regions. In the recently concluded public hearing on the Section 232 auto tariffs, almost every participant was staunchly opposed to the duties. In total, over 2,300 written submissions were sent to the Dept. of Commerce by U.S. industry participants, with nearly unanimous opposition. This is in stark contrast to the Sec. 232 investigation into steel and aluminum imports, where nearly all domestic constituents (steel producers, aluminum producers, workers) were supportive and which gave the administration important political cover to ultimately proceed with those tariffs.

What Congress Giveth, Congress Can Taketh Away

> "If the administration continues forward with its misguided and reckless reliance on tariffs, I will work to advance trade legislation to curtail Presidential trade authority."
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> – *Senator Orrin Hatch (R-Utah)*

While Congress has granted the President relatively broad authority over trade duties through the years, it is questionable whether these powers were originally intended to be leaned upon so heavily. It is perhaps not a big leap to interpret that the President is close to overstepping the spirit of his trade authority – including many powers that were granted to protect the U.S. in the midst of the Cold War. Additionally, there is more friction on the Hill surrounding the auto tariffs than the steel and aluminum tariffs simply because many congressmen have to answer to more constituents in their home states who would be negatively impacted by auto protectionism (auto manufacturers, auto dealerships, auto retail stores, manufacturing supply chains, and transportation companies, to name a few).

As a result, the administration's growing trade offensive is likely to garner growing political opposition as long as it continues on the current trajectory. We already see this beginning to materialize:

- Senator Orrin Hatch (R-UT, president pro tempore of the U.S. Senate) has recently become a strong voice in the growing resistance on the Hill to the President's aggressive trade policy on tariffs. (Hatch, now in his seventh term, is the longest serving Republican senator in history.) During the week of July 16, Hatch, who is among the President's strongest supporters on many policy issues, delivered a speech on the Senate floor, underscoring the economic damage that could accompany the President's liberal use of protectionist trade tools, and emphasized that it could completely undermine the success of recent tax reform.

> "If the administration continues forward with its misguided and reckless reliance on tariffs, I will work to advance trade legislation to curtail Presidential trade authority. I am discussing legislative options with colleagues both on and off the Finance Committee and I will continue to do so."

- Hatch has also directly attacked the investigation into potential auto tariffs, calling the move "deeply misguided" and urging the administration to stay focused on the underlying problem: addressing China's harmful trade policies, without harming American consumers.

> "Taxing cars, trucks and auto parts coming into the country would directly hit American families who need a dependable vehicle, whether they choose a domestic or a global brand. Instead of taking from the pocketbooks of hardworking Americans, I urge the administration to remain focused on addressing China's trade practices."

- Senator Hatch is not alone, as the level of political opposition grows on both sides of the aisle. Senator Bob Corker (R-TN) has introduced legislation on more than one occasion to curb the President's authority to impose tariffs. Corker's initial bill was co-sponsored by five other Republicans plus four Democrats and would have restricted the President's ability to unilaterally impose tariffs on the grounds of national security concerns. The second bill would have given Congress the option to overrule the President's use of tariffs on national security grounds, subject to a review period by Congress (say perhaps 90 days). The bills did not garner enough traction when introduced last month, as many Republican senators chose to not pursue a head-on collision with the President right before mid-term elections. However, support is likely to be stronger as auto tariffs move closer to reality, and mid-term elections are in the rear-view mirror.
- While Senators Corker, Flake (R-AZ), Toomey (R-PA), Johnson (R-WI), Warner (D-VA), Van Hollen (D-MD), Heitkamp (D-ND) and others failed to get a non-binding vote pushed onto the Senate floor in June, they were successful in pushing forward a largely ceremonial non-binding resolution on July 11 asserting that Congress should have a role in tariff measures built on national security rationale. The measure passed overwhelmingly by a tally of 88-11 and is essentially a "motion to instruct" lawmakers to incorporate language on tariffs alongside spending bills in the future. While this measure is non-binding and lacks any real teeth (future bills can simply ignore this resolution), its broad support served as a rebuke of the President's tactics and was characterized by Corker as a positive 'baby step' towards obtaining stronger, binding legislation on tariff authority in the future.

If and when further congressional opposition mounts against the President's trade policies, the legislature could simply enact a bill to curb the President's authority to act without congressional approval. Such a bill could be proposed as separate legislation, or as an amendment to a larger legislative bill (such as a spending bill or farm bill).

The International Response Will Grow Harsher; WTO Challenges Have Commenced

The WTO is an international organization, established to regulate trade and settle disputes. So why is there suddenly so much turmoil? Amid all the histrionics in the marketplace and geopolitical theater (China has accused the U.S. of starting 'the largest trade war in history'), let's take a look at what the terms of the WTO actually are, and how they are intended to govern:

- The WTO was born in the 1990s as an international framework for countries to work through trade issues and disagreements, following years of the U.S. relying on self-help remedies such as the Section 301 statute in the 1970s and 1980s. The U.S. ultimately helped formulate and shape the establishment of the WTO in 1994, which ushered in a more structured and uniform global trade system. The WTO also included governance over trade in services and intellectual property rights, which had not been governed by prior frameworks such as the General Agreement on Tariffs (GATT). This solution provided many of the remedies that the U.S. had been seeking in an international forum.
- A key provision of the WTO is its dispute settlement protocol. Unlike some other trade treaties, the WTO allows any country to pursue trade complaints and remedies in a global forum, obviating the need for self-help acts such as the use of Sec. 301 or 232 – a key reason why use of these statutes has nearly disappeared in recent years.
- Specifically, the dispute settlement process involves the 'litigation' of trade complaints through a structured, binding process with a corresponding timetable for completing the case. The first rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. The rulings can then be appealed by the defendant nation. At conclusion, a judgment is handed down by the WTO, which can sometimes include authorized retaliatory trade duties by the complainant if the violating country does not comply with the WTO's final judgment.
- Unfortunately, while the WTO is a step-change improvement over prior global trade adjudication, it is a notoriously slow-moving process. This is one complaint that many countries have had with the WTO. According to a study by the Research Institute of Industrial Economics, it takes about three years for a WTO ruling, and even longer for nations to gain authority to retaliate.
- Furthermore, the President's dissatisfaction with the WTO can be traced back to the campaign trail, where he threatened to pull the U.S. out of the organization if it did not respect his authority to levy trade duties on a unilateral basis as he saw necessary (this reasoning is diametrically opposed to WTO principles). This was a core tenet of the President's campaign platform of 'America First'.
    - Of course, dissatisfaction with the WTO is not a new phenomenon. For years, it has been widely held in political circles that the WTO has been ineffective in governing China's trade policies, which have harmed other countries (including the U.S.)
    - On the other hand, the U.S. track record in WTO disputes is quite favorable. Since the establishment of the WTO in 1995, the U.S. has filed 114 trade complaints with the organization (as of early 2017), and won the majority of them. However, it can also be said that most offensive claims end up with a successful judgment, and thus most 'respondents' end up on the losing end of the cases.

As a result of escalating U.S. trade policies, international regulatory pushback has already commenced. On July 16, China lodged a formal WTO trade complaint to challenge the U.S. imposition of $200 bil in additional import tariffs, which China claims are illegal protectionist moves. This issue sets up a high profile case that could force a key WTO ruling, as international opposition grows to U.S. policies. As noted above, the U.S. has based its $50 bil and $200 bil in Chinese tariffs on the assertion that China's trade policies are "unreasonable or discriminatory and burden or restrict U.S. commerce." However, China denies this conclusion by the U.S. and asserts the U.S. actions are "typical unilateralism, protectionism and trade bullying. They are a clear violation of the basic WTO principle of most-favored-nation treatment as well as the basic spirit and principles of international law."

U.S. Trade Balance with China

Source: Census Bureau

What About Trade Agreements? And Can the President Withdraw Unilaterally?

> "We're going to make trade deals, but we're going to do one-on-one, one-on-one, and if they misbehave, we terminate the deal. And then they'll come back and we'll make a better deal," Trump said. "None of these big quagmire deals that are a disaster."
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> – *President Donald Trump, speaking to CPAC, February 24, 2017*

Since the early days of his campaign, the President has been an outspoken critic of various U.S. trade agreements (TPP, NAFTA, KORUS) as well as the WTO, threatening multiple times to pull the U.S. out of respective deals. The President has repeatedly mentioned that he believes the U.S. is not treated fairly in many trade agreements and that our trade deficit should be narrowed. We believe this is a key reason for his aggressive stance on tariffs, as he is employing tools that might provide negotiating leverage in trade talks. But setting strategy aside, can the President actually withdraw the U.S. from a trade agreement (i.e. NAFTA) or the WTO without congressional approval?

In the case of the WTO, a member country can elect to leave the organization by submitting formal written notice to the Secretary-General of the UN, with an exit date effectuated six months later (Article XXXI, Withdrawal). However, the WTO does not prescribe what person(s) should submit withdrawal notice on behalf of a country; it is up to each sovereign entity to follow its domestic law in this regard. Thus, it is a critical point that the President does not have constitutional authority to regulate international trade and commerce. Rather, this is the jurisdiction of Congress, except for those instances where statutory authority has been granted by Congress to the President under specific terms.

For this same reason, Congressional authority has been required for free trade agreements that the U.S. has entered into throughout history. Typically, the office of the President enters into negotiations with trading partners in order to craft the terms of a trade agreement, and then submits legislation to Congress for approval. Congressional approval is required, and a majority vote in favor of the trade agreement is necessary in both houses. NAFTA and KORUS are both examples of free trade agreements that required Congressional approval. (The classification of 'free trade agreement' is also important when considering WTO implications, as free trade agreements are permitted under WTO trade rules without triggering MFN protocol.)

So how did the President withdraw the U.S. from the TPP? Due to the fact that the TPP agreement had not yet been ratified by Congress, it was not an official U.S. trade agreement, and the President was able to simply back out of the deal without presenting it to Congress.

While Congress has clearly delegated specific trade powers to the President, as we have reviewed, it has conversely not granted blanket trade authority through statutory law – and an attempt to do so would arguably be unconstitutional. For this reason, it seems unlikely to us that an attempt by the President to independently enter into, or withdraw, from a trade agreement would be legally valid. In fact, it seems reasonable that any such attempt would be challenged in court. That being said, there are some constitutional scholars and lawyers that firmly believe the President's broad foreign policy powers could entitle him to take such action, but it seems doubtful that such an action would go 'unchecked' by the very system of checks and balances built into our Constitution.

Checks and Balances: The Judicial Picture

If and when the President administers trade actions independently, those actions may be challenged in a court of law. Challenges can be brought on the basis of procedural grounds and/or substantive grounds on the limit of his executive powers. Jurisdiction of the suit must also be determined.

Through various court cases in the past that have specifically challenged issues around trade authority, jurisdiction has typically been deemed to fall under the U.S. Court of International Trade (CIT). Other jurisdictions could be utilized if the issue includes actions outside tariffs or quotas. An appeal of a CIT court decision, if any, would then proceed to the U.S. Court of Appeals for the Federal Circuit.

When the President implements trade tariffs or quotas under the cover of congressional statutes, the action could be challenged on procedural grounds (whether Congress delegated the authority legally) or on substantive grounds (if the President acted within his powers). There have already been several cases where it was upheld by the courts that the trade acts issued by Congress are constitutionally legal, given that they do not ascribe blanket trade authority to the President. As such, legal standing of the statutes has held up in court.

However, given the President's aggressive use of these trade statutes, some of his actions may ultimately be challenged on substantive grounds, and whether his actions exceed the trade authority bestowed upon him. On this topic, there is some case law where the limit of the President's authority under trade statutes was challenged:

- In *U.S. versus Yoshida International*, an import duty of 10% was implemented under the Trading with the Enemy Act of 1917 and was challenged by a Japanese importer. Despite the fact that the President made a declaration of national emergency in order to implement the tariff, the court upheld the President's action and said he acted within his strict statutory rights, and did not rule upon whether the emergency declaration was appropriate.
- In *U.S. Cane Sugar Refiners versus Block*, the court also ruled in favor of the President's imposed trade quotas issued under Section 201 of the Trade Expansion Act of 1962, stating he acted within the prescribed terms of the statute. The court went on to state that since the President adhered to the specific parameters of the respective statute, his motives, reasoning and judgment around the action should not be subject to court review.

While these precedents are significant and noteworthy, it can be argued that circumstances around the current administration are somewhat different. Presidents in the past have not been as aggressive with their use of statutory trade authority (some of which is drawn from laws rarely used in the WTO-era). Furthermore, the President's outspoken style of communication could be used against him in some legal instances (e.g. tweets proclaiming that tariffs are being used for negotiating leverage, yet legally must be based on national security concerns).

Perhaps another argument in a court challenge of the President's trade authority would come from a basic principle in constitutional law. Prior precedents in court have been grounded in the fact that the President was not overstepping his bounds since it was upheld that the President did not act on his own trade authority, but rather acted on the will of Congress. In other words, a key principle was that the President was merely the actor who was carrying out Congress' will. Yet in the current administration, with the level of congressional opposition on the rise, it may be hard to reconcile that the President is still upholding the will of Congress.

Lastly, parties suffering "irreparable harm" from any of the President's tariff actions could also seek preliminary injunctions in court to suspend the collection of import duties while the basis of the tariffs is adjudicated. These injunctions could be brought by U.S. companies, foreign companies or U.S. states. Various private sectors, and auto manufacturers in particular, invest billions of dollars in assets and infrastructure based (in part) on existing trade laws. If these laws are changed on questionable merits and cause "irreparable harm," it is likely that injunctions would be sought. The track record of courts granting injunctions against Presidential actions is mixed, but we believe it is yet another form of opposition that would emerge if aggressive tariffs are further pursued.

Concluding Thoughts

It is quite possible that the President's trade and tariff policies thus far are part of a negotiating strategy to gain more favorable trade terms and lower the U.S. trade deficit. The President has reportedly told officials close to him that he needs the credible threat of trade duties, and the leeway to implement them, in order to gain his objectives. It would appear that he is following this strategy to a T (and has made significant trade progress with the EU), despite it rattling the financial markets at times. However, the President's relatively aggressive stance does elevate the level of risk on various fronts, such as potentially higher prices for goods in the U.S. as well as risk of a prolonged trade war.

As a result of these potential hazards and the high stakes involved, should the President's use of trade law continue on an aggressive path, we expect to see growing political opposition. If additional trade barrier threats move closer to becoming reality, congressional resistance and international opposition are likely to increase, potentially resulting in a curb on the President's actions. ■

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