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R SHEET ON SECTION 232 REFORM

February 2019

BACKGROUND

Article I, Section 8, of the Constitution gives Congress the power to regulate trade. And for 150 years after ratification, Congress used these powers to set tariff rates for specific imports and to regulate international trade. But since the 1930s, Congress has generally delegated its trade powers to the president.

Indeed, the shift from an assertive to a deferential posture is underscored by the Trade Expansion Act of 1962 (TEA). Section 232 of the law delegates to the president the power to adjust tariff rates unilaterally if the Secretary of Commerce determines that a particular import harms national security. In practice, the law's ambiguous definition of "national security" has empowered presidents to make rate adjustments for a variety of reasons. However, prior to 2018, no president had invoked Section 232 to restrict imports since 1986, when the Reagan administration negotiated voluntary export restraints for "metal cutting and metal forming machine tools" with leading foreign exporters.

CURRENT DEBATE

In 2018, President Donald Trump used Section 232 to raise tariffs on steel and aluminum, and is considering actions for automobiles, auto parts and uranium. Such actions have sparked opposition in Congress. In the 116th Congress, Senators Rob Portman (R-Ohio) and Pat Toomey (R-Penn.) have introduced competing bills that would alter the process for changing tariff rates under Section 232.

Trade Security Act

The Trade Security Act (S. 365) was introduced on Feb. 6, 2019. Among its provisions, the legislation would direct the Secretary of Defense, rather than the Secretary of Commerce, to determine whether a particular import harms national security. The Secretary of Defense must report his or her findings to the president within 200 days of opening an investigation. If the report determines that the import in question threatens national security, the

SUMMARY

- Section 232 of the Trade Expansion Act of 1962 gives the president power to unilaterally adjust tariffs for the purpose of protecting national security.
- In response to recent uses of Section 232 that seem unrelated to national security, members of Congress have proposed restructuring Section 232.
- The two leading bills are currently the Trade Security Act (S. 365) and the Bicameral Congressional Trade Authority Act (S. 287).
- S. 365 establishes a congressional review process that would facilitate expedited resolutions to counteract presidential actions under Section 232. Such resolutions would still be subject to a presidential veto.
- On the other hand, S. 287 would require all actions under Section 232 to receive congressional backing to become effective. This would significantly shift the balance of power between Congress and the president.
- S. 287 also narrows the definition of national security and includes a mechanism to regulate the granting of exclusions.

president may then direct the Secretary of Commerce to develop recommendations on how to neutralize the threat. Within 100 days of that directive, the Secretary of Commerce must submit a report to the president detailing those recommendations.

Within 60 days of receiving the secretary's report, the president must decide whether and how to take action, and then must do so within the next 15 days.

Within 30 days of making a decision, the president must submit a report to Congress detailing the reasons why he or she decided to act.

S. 365 requires that the presidential report be referred upon receipt to the committees on Ways and Means and Finance in the House and Senate, respectively. Those committees then have the option to report a joint resolution of disapproval to the full House and Senate. If the joint resolution passes both chambers and is signed into law by the president, the action is reversed. In the likely event that the president vetoes the joint resolution, two-thirds of the House and Senate must vote to override the veto for the joint resolution to become law.

S. 365 also specifically exempts all actions stemming from the March 8, 2018 steel and aluminum action.

Bicameral Congressional Trade Authority Act

The Bicameral Congressional Trade Authority Act of 2019 (S. 287) was introduced on Jan. 31, 2019. S. 287 resembles S. 365 in several respects. For example, it would also direct the Secretary of Defense, rather than the Secretary of Commerce, to determine whether a particular import harms national security.

Yet, unlike S. 365, S. 287 requires Congress to approve a presidential determination that an import harms national security before any subsequent action can be taken. Specifically, the bill stipulates that the president must submit to Congress a report detailing the proposed actions to be taken under Section 232 and justifications for doing so. At that point, the president would be authorized to implement the proposed action after the enactment of a joint resolution of approval within 60 days of the date on which the report was first submitted to Congress.

Three other features of S. 287 also merit attention. The bill narrows Section 232's definition of national security, limiting it to "the protection of the United States from foreign aggression." It also requires a clearer process for administering exclusion requests. Finally, it would be retroactively effective to include all actions within four years of its passage, thereby including all actions taken by the Trump administration.

COMPARISON

While both bills would change the process around tariff increases under Section 232, Toomey's S. 287 represents a more ambitious rebalancing of power toward Congress.

Under Portman's S. 365, the president would remain structurally advantaged. His or her ability to veto a joint resolution of disapproval means that, in practice, two-thirds of the House and Senate would need to unite to

block a presidential action. Additionally, the president's allies could bottle up a resolution of disapproval in committee, since S. 365 does nothing to force floor consideration or limit the filibuster.

S. 287 structures the process to empower Congress vis-à-vis the president by requiring the House and Senate to pass a resolution of approval before the proposed tariff adjustment can take effect. It also empowers rank-and-file members by limiting committee consideration to 10 days. Finally, S. 287 stipulates that the motion to begin debate on a resolution of disapproval cannot be filibustered in the Senate.

Both bills have bipartisan support. Seven senators have co-sponsored S. 365 (four Republicans and three Democrats). Nine senators have co-sponsored S. 287 (four Republicans and five Democrats). Both bills also have the support of key members on the Senate Finance Committee, which is currently reviewing the proposals. In addition to Sen. Portman, who sits on Finance, S. 365 has been co-sponsored by one other Republican member. Of those supporting S. 287, two Republicans and two Democrats serve on the Finance Committee. Senator Portman's office has argued that his bill is less likely to run into a presidential veto.

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