

Intelligence MEMOS



From: Jon Johnson
To: The Honourable Jim Carr, Minister of International Trade Diversification
Date: January 29, 2019
Re: **ANOTHER BAD US TRADE IDEA MARCHES FORWARD**

Last Thursday, Representative Sean Duffy, a Wisconsin Republican, introduced a [bill](#) to enact the *United States Reciprocal Trade Act* (USRTA).

USRTA authorizations would be triggered if the president determines that a foreign country's tariff on a good imported from the US is significantly higher than the corresponding US tariff, or that the non-tariff barriers (NTBs) applied by a foreign country to a good imported from the US are significantly higher than corresponding burdens imposed by the US.

Once a determination is made, the president is authorized to negotiate and enter into an agreement with the country to reduce or eliminate the tariff or the NTB. Taken by itself, this course of action could have positive results if that country is a WTO member and, bound by the most-favoured-nation (MFN) obligation, extends to all other WTO members the concessions agreed to with the US.

However, regardless of whether negotiations occur, the president is also authorized to impose a rate of duty equal to the duty imposed by the foreign country, or to impose an effective rate of duty equal to the foreign country's NTB. Before taking either action, the president must consult with specified congressional committees.

Congress may enact a disapproval resolution respecting a duty imposed under this authority, in which case the duty ceases to have effect. Critically, however, such a disapproval resolution expressly requires a supermajority of two-thirds in both the House and in the Senate.

The president's authorization to impose duties expires after three years unless the president requests a three-year extension. The extension is automatic unless Congress enacts a disapproval resolution, which in this case does not require a two-thirds supermajority. Duties imposed prior to the sunset remain in effect, as does the authorization to negotiate agreements.

Congress should carefully consider several factors in deciding whether to enact the USRTA.

First, Congress will surrender even more power to the president than it already has under legislation such as Section 232 of the *Trade Expansion Act of 1962*. The right to be consulted does not confer power. The two-thirds threshold required for a disapproval resolution is the same threshold as required to overcome a presidential veto.

Second, if the president imposes a duty respecting a good of a WTO member that exceeds the US WTO bound rate, the US will have no defence to a WTO complaint filed by that member. After complying with WTO requirements, the member can retaliate by imposing additional duties on a range of US goods.

Finally, the WTO trade-in-goods provisions are based on the MFN principle and not on reciprocity. Subject only to arrangements such as free trade agreements, the MFN based system has the significant advantage of requiring that each member provide even-handed treatment of the goods of all other members and prevents special bilateral arrangements by requiring that the same treatment be extended to all members. Congress must carefully consider the effect on the rules-based WTO system if the US adopts an approach to trade in goods that violates WTO norms, and the retaliation that will follow.

A drawback of the MFN principle is that one WTO member can agree to a bound rate on a good of 2.5 percent while another member may only agree to a bound rate of 10 percent (a frequent US complaint). These differences feed into the Trump administration's preferred bilateral approach to trade, with its inherent risk of ultimately raising rather than lowering trade barriers. Negotiating a reduction in these differences should be a WTO, and hence Canadian, priority.

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