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Navarro Asks Congress to Give Trump Absolute Authority over the US Tariff Schedule

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White House adviser **Peter Navarro** recently urged Congress to pass the “Reciprocal Trade Act,” drafted by **Representative Sean Duffy** (R-WI) at the behest of the White House. The bill would give Trump unfettered discretion to raise US tariffs against imports from countries that impose higher duties than existing US rates. Fortunately, Senate Finance Committee **Chairman Chuck Grassley** immediately dismissed the proposal, arguing that presidential authority over trade needs to be curbed, not enlarged. As Grassley implied, Navarro’s proposal should die in the cradle. Instead, bills advocated by **Senators Rob Portman** (R-OH) and **Mike Lee** (R-UT), among others, that would compel the president to seek congressional approval for Section 232 tariffs should be enacted—before Trump does further damage to the world trading system.

US statutes passed by Congress over the past century already enable the president, for specific reasons, to impose new tariffs and otherwise regulate all manner of foreign commerce—imports and exports of goods and services, along with financial, data, and technology flows. Trump has not hesitated to invoke some of these laws. The proposal Navarro is promoting differs from existing statutes by giving the president an additional reason to restrict imports—regardless of US commitments in the World Trade Organization (WTO) and bilateral free trade agreements. The Duffy bill—if enacted—would add another US violation of WTO rules. To summarize existing statutes that empower the president to restrict foreign commerce:[1]

- **Section 232 of the Trade Expansion Act of 1962:** The president can restrict imports that threaten national security. On June 1, 2018, **Trump** used the law to impose a 25 percent tariff on steel imports and a 10 percent tariff on aluminum imports.[2] In response, several US trading partners imposed retaliatory tariffs and brought forth

a WTO case, citing General Agreement on Tariffs and Trade (GATT) Article XXIII Nullification or Impairment.

- **Section 122 of Trade Act of 1974:** The president can impose a 15 percent tariff against a country that runs a large trade surplus with the United States. However, the tariff expires in 150 days without further congressional authorization.
- **Section 301 of the Trade Act of 1974:** The president can impose retaliatory actions against a country that engages in “unjustifiable, unreasonable or discriminatory” practices. Using this law, Trump imposed tariffs on **\$250 billion of imports from China**, and China responded with retaliatory tariffs.
- **Trading with the Enemy Act of 1917 (TWEA):** In time of war, the president can restrict all forms of foreign commerce. Indeed, Franklin Roosevelt used TWEA to declare a bank holiday during the Great Depression, Lyndon Johnson used TWEA to restrict outward direct investment, and Richard Nixon used TWEA to impose a 10 percent surcharge on imports. Until the Carter administration, TWEA was the main vehicle for imposing economic sanctions in pursuit of foreign policy goals. As a legal matter, the United States is almost always at war, declared or otherwise.
- **International Emergency Economic Powers Act of 1977 (IEEPA):** Upon declaring a national emergency, the president can invoke nearly the same range of measures available under TWEA. Over the last four decades, most US sanctions have been imposed under the authority of IEEPA.

In short, President Trump has ample weapons to restrict foreign commerce. Adding the Reciprocal Trade Act to the president’s arsenal would entail a complete abdication of power assigned to Congress by Article I, Section 8 of the Constitution. Moreover, it would openly invite cronyism and corruption: Just raise tariffs against countries or companies that are not the president’s friends. Defending his handiwork, Representative Duffy claimed that foreign tariffs higher than US rates on any of the 11,625 8-digit items enumerated in the US tariff schedule amount to “**robbery.**” Duffy is right at home with 16th century mercantilists, oblivious to the benefits of two-way trade, believing that when other countries obstruct commerce, the United States should do the same, tit-for-tat.

Fortunately, House and Senate Republicans who have so far acquiesced to Trump’s brand of protectionism are showing healthy resistance to Navarro’s power grab. They should now take the next logical step: Sponsor legislation that will slow down Trump’s use of existing trade weapons. In this endeavor they will find enthusiastic companions among Democrat legislators.

NOTES

1. For details, see Gary Clyde Hufbauer, “Could a President Trump Shackle Imports?” in PIIE Briefing **Assessing Trade Agendas in the US Presidential Campaign** (2016).

2. Argentina, Brazil, and South Korea have annual/quarterly quotas for steel in return for permanent tariff exemptions.