



The Impact of the President's Trade Agenda on Our Industry

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“We will work to fix bad trade deals and negotiate new. And they'll be good ones. But they'll be fair. The United States has finally turned the page on decades of unfair trade deals that sacrificed our prosperity and shipped away our companies, our jobs, and our wealth.”

-- President Trump, State of the Union, January 30, 2018.



Jonathan Swan Aug 27

Exclusive: Trump vents in Oval Office, "I want tariffs. Bring me some tariffs!"

Trump, addressing Kelly, said, "John, you haven't been in a trade discussion before, so I want to share with you my views. For the last six months, this same group of geniuses comes in here all the time and I tell them, 'Tariffs. I want tariffs.' And what do they do? They bring me IP. I can't put a tariff on IP." (Most in the room understood that the president can, in fact, use tariffs to combat Chinese IP theft.)

"China is laughing at us," Trump added. "Laughing."

Kelly responded: "Yes sir, I understand, you want tariffs."

Gary Cohn, who opposes tariffs and the protectionist trade measures pushed by the Bannonites, had his shoulders slumped and was clearly appalled by the situation.

Staff secretary Rob Porter, who is a key mediator in such meetings, said to the president: "Sir, do you not want to sign this?" He was referring to Trump's memo prodding Lighthizer to investigate China — which may lead to tariffs against Beijing.

Trump replied: "No, I'll sign it, but it's not what I've asked for the last six months." He turned to Kelly: "So, John, I want you to know, this is my view. I want tariffs. And I want someone to bring me some tariffs."

Kelly replied: "Yes sir, understood sir, I have it."

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Presidential trade directives have yet to produce tangible outcomes

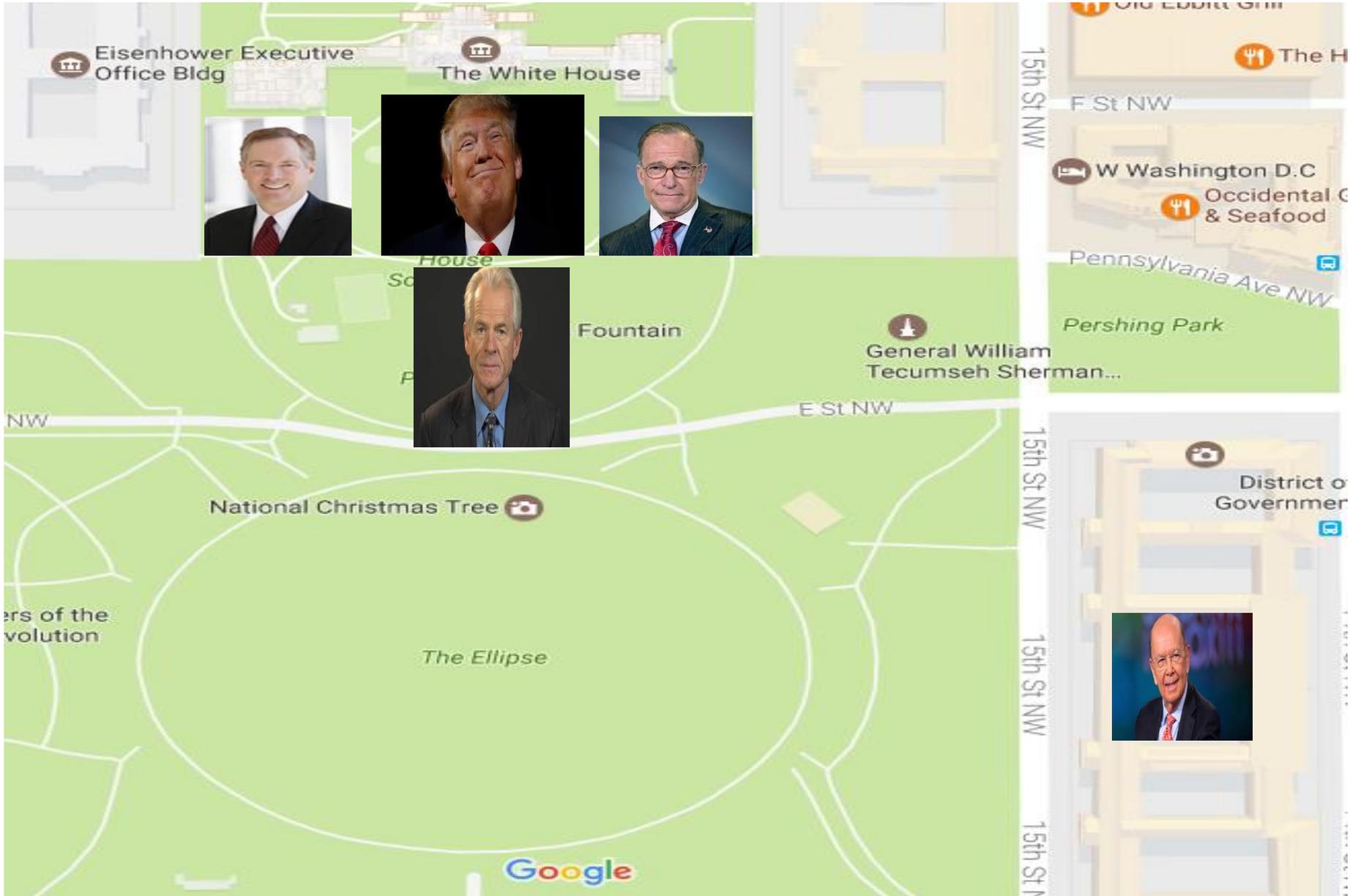
January 04, 2018

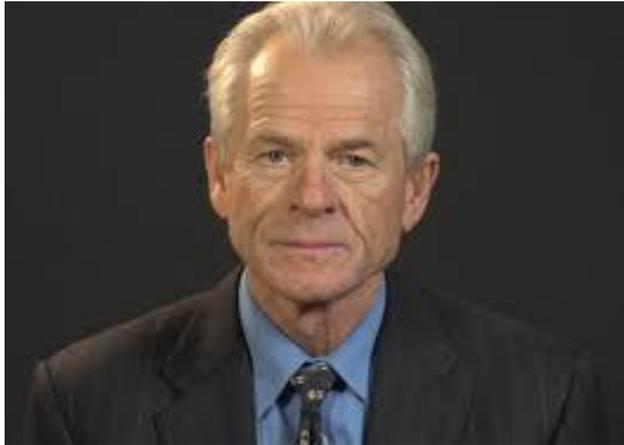
Presidential directives demanding trade actions have yet to produce tangible outcomes

December 29, 2017

Trump administration heads into 2018 without key USTR, Commerce, ITC officials

December 22, 2017





“It does the American economy no long-term good to only keep the big box factories where we are now assembling ‘American’ products that are composed primarily of foreign components. We need to manufacture those components in a robust domestic supply chain that will spur job and wage growth.”

To the Financial Times, 1/31/17

Global Safeguards on Washers, Solar Products

- On January 22nd and February 7th, President Trump slapped steep tariffs on imports from all countries of solar products and washing machines (the “201 Safeguard”). The tariffs last 4 years.
- Last use of the 201 Safeguard was use by President Bush in 2002 to protect the U.S. steel industry.
- Every use of 201 by the United States has been ruled illegal at the World Trade Organization. In early April, Korea, Japan, China, and the EU filed dispute resolution claims at the WTO and announced their intent to retaliate.



National Security Tariffs on Steel, Aluminum

- Section 232 of the Trade Expansion Act of 1962 permits the President to impose tariffs and/or quotas if imports threaten national security.
- “Section 232” gives broad discretion to the President, but has been only used once before (with respect to oil imports from Libya in 1982) and has never been utilized since the conclusion of the WTO Uruguay Round in 1994.
- The authority to conduct “Section 232” investigations has long been delegated to the Commerce Department’s Bureau of Industry and Security (BIS), an office with little experience with imports and tariffs.

Run-Up to the Tariffs

- In April 2017, the President, invoking Section 232, asked Commerce to conduct investigations into whether imports of steel and aluminum threaten national security.
- Commerce's inquiries generated vigorous internal Administration dissension. The Department of Defense argued against import restrictions (DoD argued that the military has access to a reliable supply of steel and aluminum and argued that trade measures would anger key allies).
- On January 11, 2018, the Commerce Department delivered its steel report to the President, finding that imports of steel threaten national security and recommending, among other options, a 24% tariff on imports of steel from all countries. On January 18, Commerce delivered its aluminum report to the White House, finding that imports of aluminum threaten national security and recommending, among other options, a 7.7% tariff on imports of aluminum from all countries.
- Though the President, under the law, had until mid-April to consider the Commerce Department's recommendations, the President abruptly decided in the first week of March to announce he was imposing tariffs on all imports of steel and aluminum.

National Security Tariffs on Steel, Aluminum

- On March 8, the President announced he was imposing a 25% tariff on imports of steel and a 10% tariff on imports of aluminum.
- The President announced that Canada and Mexico would be exempt from the tariffs.
- The tariffs were to go in to effect on March 23.
- The EU immediately announced plans to retaliate, and issued a long list U.S. products that would face tariffs into the EU, including Levi's jeans, Kentucky bourbon, and Harley Davidson motorcycles. Other countries' responses were more muted.

What Steel Products are Covered?

- “Steel articles” are defined at the Harmonized Tariff Schedule (HTS) 6-digit level as: 7206.10 – 7216.50; 7216.99 – 7301.10; 7302.10; 7302.40 – 7302.90, and 7304.10 – 7306.90.
- Chapters 72 and 73 of the U.S. Harmonized Tariff schedule, which include detailed product descriptions for the dozens of products captured by the above numbers, can be found here: <https://hts.usitc.gov/current>

What Aluminum Products are Covered?

- “Aluminum articles” are defined as products covered by the following Harmonized Tariff Schedule (HTS) numbers: 7601 (unwrought aluminum); 7604 (bars, rods, and profiles); 7605 (wire); 7606 (plate, sheet, and strip, including can sheet); 7607 (foil); 7608 (tubes and pipe); 7609 (tube and pipe fittings); 7616.99.51.60 (castings); 7616.99.51.70 (forgings).
- Recycled aluminum under HTS 7602 is not covered by the tariffs.
- Chapter 76 of the U.S. Harmonized Tariff schedule, which includes detailed product descriptions for the products captured by the above numbers, can be found here: <https://hts.usitc.gov/current>

Decision to Exempt Many Countries

- On March 22, the President signed a Proclamation, exempting the following countries from the tariffs until May 1, 2018: Canada, Mexico, Australia, Argentina, Brazil, South Korea, and 28 EU member countries.
- Japan and Turkey not excluded.
- On March 28, at the close of a “re-negotiation” of their bilateral free trade agreement, the U.S. and Korea announced an annual quota on imports of Korean steel of 2.68 million tons (70% of trade volume in 2015-17). The two countries, though, have yet to formally sign any agreement. If they formalize an agreement, Korea would be permanently exempt from the tariffs.
- U.S. trying to use the steel and aluminum tariffs as leverage to quickly negotiate new free trade agreements.

Product Exclusions

- The President’s March 8 Proclamation directed Commerce to exclude any steel article “determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality,” after also considering national security.
- The President also stipulated that requests for exclusions be “made by a directly affected party located in the United States.”
- In considering requests, the President required Commerce to consult with the State Department, the Treasury Department, the Department of Defense, the U.S. Trade Representative (USTR), the National Security Council, and the National Economic Council.

How Does the Exclusion Process Work?

- The Commerce Department's Bureau of Industry & Security is administering the exclusion process jointly with the Commerce Department's bureau of Enforcement & Compliance (which Barnes & Thornburg's David Spooner used to head). The bureau of Enforcement & Compliance has deeper experience with the steel and aluminum industries and with the application of tariffs.
- Commerce has published important draft exclusion regulations and forms in the Code of Federal Regulations:
 - 15 CFR Part 705, Supp. No. 1: Requirements for Requesting Exclusions from 232 Steel Tariffs,
 - 15 CFR Part 705, Supp. No. 2: Requirements for Requesting Exclusions from 232 Aluminum Tariffs.
- The form to request an exclusion for a steel product can be downloaded from this site: <https://www.bis.doc.gov/index.php/232-steel>
- The form to request an exclusion for an aluminum product can be downloaded from this site: <https://www.bis.doc.gov/index.php/232-aluminum>
- These websites also contain links to download forms used to object to an exclusion request.

Timeline

0-day

- Filing of product exclusion request.
- BIS evaluates sufficiency of request and posts to website (Regulations.gov).

30-day

- Public comment period; opponents can submit objections to request for 30 days after the request is posted to Regulations.gov

90-day

- Agency deliberation.
- From Day 30 to Day 60, Commerce's bureau of Enforcement & Compliance will evaluate the request and provide a recommendation.
- Decision to approve or deny exclusion request "normally" within 90 days.

Tariffs in Retaliation for China IP Violations

- Section 301 of the Trade Act of 1974 gives the U.S. Trade Representative the authority to impose tariffs or quotas in any country is not living up to the terms of a trade agreement or is taking “unjustifiable” actions that restrict U.S. Commerce.
- In August 2017, USTR initiated a 301 case on China IP violations.
- On March 22, USTR gave a report to the President, outlining China’s more egregious IP policies (state-sponsored hacking, software licensing regulations that discriminate against foreign suppliers, and regulations that require foreign joint venture partners to transfer their technology know-how to their Chinese partner).



Tariffs in Retaliation for China IP Violations

- The report did not recommend tariffs, but, upon receipt of the report, the President directed USTR “to consider” imposing tariffs in response to China’s IP policies and to report back in 60 days (May 21st).
- On April 3, USTR published a list of proposed products subject to tariffs. The list is derived from a China central planning document (“Made in China 2025”), and would amount to \$50 billion in tariffs annually. April 23 deadline to request to appear at USTR’s hearing. Written comments due May 11. Hearing May 15. Post-hearing rebuttal comments due May 22.
- When China quickly threatened to retaliate, the President directed USTR to consider an additional \$100 billion in tariffs.



Self-Initiation of Trade Remedy Cases

- At the end of November, Commerce self-initiated anti-dumping and anti-subsidy cases on aluminum imports from China.
- The first time since 1992 that the Government has self-initiated a trade remedy case.
- Commerce has an internal task force to explore self-initiation of cases for other products.
- Possible case on seasonal produce from Mexico.





Lighthizer: Not Enough Progress Made at Seventh NAFTA Round with Time Running Out

-- Inside U.S. Trade, March 5, 2018.

USTR Scraps Official NAFTA Round Eight This Week

-- Inside U.S. Trade, April 4, 2018.

Trump: 'No Time Line' for NAFTA Deal; U.S. 'Can Negotiate Forever'

-- Inside U.S. Trade, April 12, 2018



“He [Trump] terminated the Trans-Pacific deal; he didn’t terminate TTIP. That was meant quite deliberately and quite overtly as a message that we’re open to discussions with the European Commission.”

-- U.S. Commerce Secretary Wilbur Ross, signaling a desire to restart trade negotiations with the EU, March 29, 2018

“We have not offered the U.S. anything. We are demanding a permanent and unconditional exception [from the steel and aluminum tariffs]. When that is confirmed by the President, we are, as always, willing to discuss anything when it comes to trade... But we are not negotiating anything under threat. We are not offering them anything.”

-- EU Trade Commissioner Cecelia Malmstrom, April 18, 2018

TRANS - PACIFIC PARTNERSHIP





Canada, TPP members strike trade deal without U.S.

-- Toronto Star, January 23, 2018.

Trump Considers Rejoining TPP

-- CNN, April 13, 2018.

Trump Renews Attack on TPP: 'I Don't Like the Deal'

-- CNNMoney, April 18, 2018.



GSP

- The Generalized System of Preferences Program expired on December 31, 2017. On February 14, the House voted 400-2 to renew the program for three years and to retroactively apply the tariff cuts. Senate approval is less certain. GSP enjoys bipartisan support, but Senate rules make it difficult to move trade legislation without attracting revenue-related amendments.

MTBs

- The MTB is a law that suspends, for 2 years, tariffs on certain products not made in the U.S. The last MTB expired on 12/31/12. In August, the ITC, pursuant to a congressional compromise, submitted recommendations for a new MTB to Congress. Congress was supposed to enact new MTB legislation within 90 days of receiving the ITC's final report. That did not happen. The White House opposed a congressional attempt to renew the tariff suspensions in the government funding bill that passed in March.

Thank you!

Questions?