

Congress Should Compel the President to End the Section 232 Automotive Investigation and Release the Commerce Department Report

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KEY TAKEAWAYS

The Trump Administration missed an important deadline in its investigation into automobile and automobile part imports.

The President may have forfeited his ability to impose tariffs on these products under Section 232 of the Trade Expansion Act of 1962.

Congress should compel the Administration to end the investigation of automotive imports and release the Commerce Department's February 2019 report to the public.

In May 2019, the Trump Administration declared that the import of certain automobiles and automobile parts are a threat to U.S. national security.¹ At the same time, U.S. Trade Representative Ambassador Robert Lighthizer began to negotiate with the European Union, Japan, and other countries to resolve this threat.

Furthermore, an executive order required Ambassador Lighthizer to provide an update after 180 days, but Section 232 of the Trade Expansion Act of 1962 also requires the President to submit to Congress a written statement on his decision within this time period. The deadline for this decision was November 14. As of the publication of this *Issue Brief*, President Donald Trump has neither made a decision nor informed Congress of his intentions.

The Trump Administration's disregard for the prescribed deadlines in Section 232 should be cause

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for concern. The ongoing threat of automotive tariffs is harmful to the industry and could jeopardize the future of pending trade agreements, including the U.S.–Japan Trade Agreement (USJTA). It is also possible that by missing this deadline, the President forfeited his ability to adjust imports following the investigation. Congress should compel the Administration to end the automotive investigation and release the Department of Commerce’s report that suggests that automotive imports threaten to impair U.S. national security. Congress should also reform this broken statute as soon as possible.

Health of the Automobile Industry

The global automobile industry is entering a downturn. The world economy is expected to grow by 3.0 percent in 2019, the slowest rate since the Great Recession.² Germany, home to some of the largest auto manufacturers in the world, is nearing an official recession. German automakers and their suppliers are facing downward pressures on profit margins and struggling to restructure following new emission rules.³ According to the International Monetary Fund, slow growth in the world was aided by “a sharp downturn in car production and sales, which saw global vehicle purchases decline by 3 percent in 2018.”⁴

Automakers in the U.S., both foreign and domestic, are feeling similar pressures, largely due to the global nature of automotive supply chains. The average price of a new car in the U.S. reached \$36,718 in 2019, roughly 2.7 percent higher than in 2018.⁵ Demand for new cars in the U.S. is declining as well and this is affecting sales.⁶ During the first half of 2019, auto sales were “down 2.4 percent...on pace to finish at slightly more than 16.9 million [units], which would be the first time shy of 17 million since 2014.”⁷

The history of foreign automobile imports has been a net positive for the U.S. economy. Not only do more imports allow Americans greater options and diversity when buying a new car, foreign auto manufacturers’ investments support more than 1.6 million domestic jobs.⁸

Tariffs Hurt and Uncertainty Persists

Automakers have faced tariffs on vital imports of steel and aluminum, as well as the cost of uncertainty regarding the ongoing U.S. trade dispute with China. Additionally, it is hard for global auto manufacturers to plan for the future due to potential changes to rules-of-origin standards under the United States–Mexico–Canada Agreement (USMCA). The threat of tariffs

on automobiles and parts has loomed over the industry for more than 500 days, also affecting the ability of businesses to plan ahead. In short, the deck is stacked against automakers at a time when it is already difficult to maintain productivity and competitiveness in the global market.

All of these policies combined could be detrimental to the automotive industry. The Center for Automotive Research (CAR) estimates that when the effects of the USMCA, current tariff schemes, and tariffs on automotive products are combined, roughly 366,900 domestic jobs would be lost, and that the price of cars in the U.S. would increase by \$2,750. CAR also found that “the broad-based Section 232 autos and auto parts tariffs will be responsible for over 90 percent of the total economic harm.”⁹

Meanwhile, the future of new U.S. trade deals, like the recently negotiated USJTA, remains uncertain. This agreement has yet to be implemented by the U.S. or Japan, and the ongoing threat of automotive tariffs may be a hindrance to the prospects of full implementation. The U.S. and Japan announced in a joint statement: “While faithfully implementing these agreements, both nations will refrain from taking measures against the spirit of these agreements and this Joint Statement.”¹⁰ But Japan was not guaranteed an exemption from any potential automotive tariffs. Until Japan knows for certain that it is exempt from this threat, it will question whether the USJTA is sustainable.

White House Overstepping Authority Again?

The White House has not released official documents to Congress or the public detailing the President’s decision. Instead, Administration officials have reportedly collected information from automakers with U.S. operations about their future investment plans. *The New York Times* reported, for instance, that “the German car industry is promising to create 25,000 jobs at factories in the United States.”¹¹ It is clear that the investigation is not only about national security, but also an effort by the Administration to influence the supply chain and investment decisions of private businesses. A recent Heritage Foundation report details why automotive imports are, in fact, not a threat to U.S. national security.¹²

Furthermore, the President may no longer have the authority to restrict imports under the current Section 232 investigation because he failed to provide notice to Congress by November 14. This procedural question came to light after a ruling by the U.S. Court of International Trade regarding U.S. tariffs on Turkish steel imports under Section 232. The court determined that, because additional tariffs placed on Turkey were not implemented

within 90 days of the President receiving a report from the Secretary of Commerce suggesting the import of steel is a national security threat, that the tariffs were not permissible under the law.¹³ This case does not apply directly to the automotive investigation; however, it does provide insight into the judicial position of the timelines provided under Section 232. If the President decides to go beyond the authority granted to him through Section 232 to restrict automotive imports or delays his decision further, the threat of tariffs could be baseless.

Recommendations

The clock may have run out for the Trump Administration to restrict imports of automobiles and automobile parts under Section 232 of the Trade Expansion Act of 1962. It is time for certainty to be restored for automakers. In order to exercise its authority over U.S. trade policy, Congress should:

- **Compel the Administration to end the investigation of automotive imports and release the Commerce Department's report that suggests that automotive imports could impair U.S. national security.** The Trump Administration did not follow the procedures under Section 232 and missed its November 14 deadline to restrict auto imports. The threat of automotive tariffs has loomed for more than 500 days and it is time for the uncertainty to end. The law requires that the findings of a Section 232 investigation be released to the public.
- **Reform Section 232 to rebalance congressional and executive trade authority.** Section 232 is an antiquated trade tool that gives the executive branch virtually unchecked authority to impose or increase tariffs on U.S. imports. President Trump has exploited the weaknesses in this law to impose tariffs.

Conclusion

The Trump Administration's failure to follow the timeline set out in Section 232 of the Trade Expansion Act is the latest example of the flaws in the law. It also brings into question whether the concerns that this Administration has about imports threatening U.S. national security are legitimate. The President may have forfeited his right to restrict imports under the current

investigation of automotive imports. Automakers are hurting, largely due to the Administration's trade policies, and the threat of automotive tariffs must end. It is also time for Congress to reform this broken trade law.

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Endnotes

1. Donald J. Trump, "Adjusting Imports of Automobiles and Automobile Parts into the United States," White House, May 17, 2019, <https://www.whitehouse.gov/presidential-actions/adjusting-imports-automobiles-automobile-parts-united-states/> (accessed November 19, 2019).
2. International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn, Rising Trade Barriers*, October 2019, p. xvi, <https://www.imf.org/en/Publications/WEO/Issues/2019/10/01/world-economic-outlook-october-2019> (accessed November 19, 2019).
3. Martin Arnold, "Germany Narrowly Avoids Recession as Growth Ticks Up," *Financial Times*, November 14, 2019, <https://www.ft.com/content/a6df76e8-06aa-11ea-a984-fbbacad9e7dd> (accessed November 19, 2019).
4. International Monetary Fund, *World Economic Outlook*, p. 1.
5. Anna Hecht, "Car Prices Are Increasing—Here's How that Can Hurt Americans," CNBC, October 22, 2019, <https://www.cnbc.com/2019/10/22/car-prices-are-rapidly-increasing-heres-why-thats-bad-for-americans.html> (accessed November 19, 2019).
6. Jim Edwards, "The Failing Automobile Industry Is Pushing Us Toward a Global Recession," *Business Insider*, February 19, 2019, <https://www.businessinsider.com/automobile-car-industry-production-global-recession-2019-2> (accessed November 19, 2019).
7. Nick Bunkley, "8 First-half Sales Tales," *Automotive News*, July 7, 2019, <https://www.autonews.com/sales/8-first-half-sales-tales> (accessed November 19, 2019).
8. Thomas J. Prusa, "The Contributions of Japanese-Brand Automakers to the United States Economy: Updated Study," Japan Automobile Manufacturers Association, May 21, 2019, <https://www.jama.org/wp-content/uploads/2019/05/prusa-jama-usa-employment-study-2019-2018-data-5-21-19-final.pdf> (accessed November 19, 2019).
9. Michael Schultz et al., "U.S. Consumer & Economic Impacts of U.S. Automotive Trade Policies," Center for Automotive Research, February 2019, p. 1, <https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf> (accessed November 19, 2019).
10. News release, "Joint Statement of the United States and Japan," The White House, September 25, 2019, <https://www.whitehouse.gov/briefings-statements/joint-statement-united-states-japan-2/> (accessed November 19, 2019).
11. Jack Ewing and Ana Swanson, "Trump May Punt on Auto Tariffs as European Carmakers Propose Plan," *The New York Times*, November 11, 2019, <https://www.nytimes.com/2019/11/11/business/trump-auto-tariffs.html> (accessed November 19, 2019).
12. Tori K. Whiting, "Automobiles Do Not Threaten U.S. National Security," Heritage Foundation *Backgrounder* No. 3421, July 22, 2019, <https://www.heritage.org/trade/report/automobiles-do-not-threaten-us-national-security>.
13. Devin S. Sikes, "U.S. Court of International Trade Confirms Limits to Section 232 Action," Akin Gump, November 18, 2019, <https://www.akingump.com/en/experience/practices/international-trade/ag-trade-law/u-s-court-of-international-trade-confirms-limits-to-section-232.html> (accessed November 19, 2019).