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Trump's Punitive Power Over Companies Appears Hedged

William Mauldin and John D. McKinnon

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Donald Trump would have the unilateral authority as president to impose targeted tariffs on an American company's goods if that company moves production abroad, some trade lawyers said.

But any executive action likely would face legal challenges and the Trump administration might elect to pursue tax legislation in Congress to accomplish his goal.

Trade experts are debating how Mr. Trump proposes to go about disciplining companies and the arguments are being watched closely by multinational companies concerned that the president-elect will fulfill threats to impose tariffs of up to 35% on goods coming into the U.S. from American companies that decide to move production out of the country.

Mr. Trump **reiterated those warnings on Sunday.**
"There's a 35 percent tax, but there is no tax if you don't move," Mr. Trump said on Fox News Sunday, referring to hypothetical plans by a U.S. company to relocate. "But if you move your plant or factory and you want to sell back into our country, you fire all your people, there are going to be consequences for that."

Rarely used trade legislation gives presidents surprisingly broad authority to put products on a "retaliation list" and impose a tariff—essentially a tax—at the border, although any effort to target specific companies the way Mr. Trump has suggested would likely face challenges in U.S. courts and in international trade tribunals, the lawyers said.

During his campaign Mr. Trump threatened to use different legal mechanisms against allegedly unfair trade practices of other countries, including China and Mexico. Lately he has focused on American companies that shift production abroad, a sensitive issue in the Midwestern states that helped him defeat former Secretary of State Hillary Clinton.

Trump transition team representatives didn’t immediately comment on the details of his proposal for a 35% tax.

Mr. Trump’s most serviceable tool—and one he mentioned in a trade speech in June—is**Section 301 of the Trade Act of 1974,** trade lawyers said.
“Section 301 is pretty broad, and it would mean he doesn’t need new authority from Congress in order to act,” said Warren Maruyama, a partner in the Washington office of Hogan Lovells and a former general counsel at the U.S. trade representative’s office.
Mr. Maruyama and others said Mr. Trump probably has the authority not only to target certain product types for import tariffs but also to target a specific company’s products when the firm is accused of offshoring.

Section 301, like other trade laws, was written primarily to address complaints against a partner country rather than a U.S. company, so Mr. Trump would probably have to find fault with the country that lured the factory away from the U.S.

But other trade experts said Section 301 can’t legally be used to single out an individual company.

Challenges in U.S. courts or the World Trade Organization could frustrate any effort to do so—but only after about three years of litigation, they said.

“I think Trump needs new legislation to carry out this threat,” said Gary Hufbauer of the Peterson Institute for International Economics, which backs trade liberalization. Naming a particular company would run afoul of constitutional guarantees of equal protection and due process, he said.

“I don’t think it would survive a court challenge,” said Dan Ikenson, head of the trade-policy center at the Cato Institute, a libertarian think tank. “Congress needs to be involved—you can’t really do this unilaterally.”