

Longview News-Journal

Is talk of U.S. steel tariffs giving you deja vu? It shouldn't

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January 20, 2018

Donald Trump is closer to making a decision on U.S. steel tariffs, in a move that could elicit comparisons to the last Republican president's protectionist measures on metal imports.

But any feelings of deja vu would be misleading, as Trump's strategy to protect domestic steelmakers would be far different than George W. Bush's move back in 2002.

At the time, Bush slapped tariffs on steel using power granted to him by Section 201 of the 1974 Trade Act, whereas Trump would be employing a different tool, Section 232 of the 1962 Trade Act.

The two undoubtedly sound alike, and they do have similarities. The laws allow the president to impose tariffs without congressional approval if a government-run investigation finds that imports are harming or threatening the U.S.

But the big parallels pretty much stop there, as the two tools are carried out differently and address different kinds of trade threats. Those contrasts reveal why Trump's policy is seen as a potentially bold move — and is drawing criticism.

The administration's argument that steel imports could threaten national security has raised eyebrows, as America's biggest foreign provider of steel is Canada. But trade lawyers largely agree it's more likely the White House can impose duties if section 232 is used rather than 201.

For starters, Trump can count on a trusted Cabinet member if he uses section 232 rather than an independent panel at the ITC to decide whether tariffs are needed. Commerce Secretary Wilbur Ross, a frequent critic of steel dumping, gave Trump results of the 232 probe last week, and the president has 90 days to decide on its recommendations, which could include tariffs and/or quotas. (Ross didn't publish details of his findings.) Commerce is conducting a similar investigation into aluminum, which is due later this month.

Secondly, the burden of proof is arguably stricter for 201, according to Simon Lester, a lawyer and trade policy analyst at the Cato Institute in Washington. That being said, the ITC in a recent 201 probe did recommend the president impose duties on cheap solar panels.

"With section 201, you have to show that imports are causing serious injury. If your domestic industry is making profits, it's hard to show that, and right now the economy is doing pretty well," Lester said. "You don't have to show that with section 232."

Frank Samolis, co-chair for international trade at law firm Squire Patton Boggs, agreed.

"There are too many hurdles under a 201 to give the administration confidence they would prevail," he said. "Now you go to the 232, and that's totally within the control of the executive branch. They don't have to determine any unfair trade practice, and they don't have to make any judgment or meet any thresholds with respect to the volume of imports."