

Trump Should Tread Softly On His New Trade Agenda

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President-Elect Donald Trump has released an ambitious to-do list. His plans for cutting individual and corporate taxes, for repealing and replacing ObamaCare, and for regulatory reform all hold great promise. But his threat to dismantle the North American Free Trade Agreement (NAFTA), and to use import duties to force our trading partners to bend to his will, would tank any economic recovery and have severe constitutional implications.

It's crucial to remember the tremendous benefits of trade, particularly through NAFTA. About one-third of all U.S. merchandise exports are bought by Mexico and Canada, and exports from our service industries and from the agriculture sector have risen dramatically under the agreement.

Thanks to imports, American families effectively stretch their pay check by about \$10,000 each year. Around 800,000 American auto industry jobs depend on a seamless North American supply chain to stay globally competitive. American-made raw materials constitute about 40% of the content of the products we import from Mexico, and almost 75% of all U.S. inputs that return here as finished goods come from Canada and Mexico. Undoing NAFTA would cause job losses, lower living standards and economic calamity.

The imposition of tariffs punishes all American consumers, and businesses that use cheap imports as raw material in the things they make. The reward for tariffs goes to a select few in a certain politically connected industry that is being protected. It's cronyism that hurts all Americans and does nothing to fix whatever perceived problem there was with trade.

But, there's more than an economic issue at stake. There's the potential for a constitutional crisis that could arise from a president taking unilateral action to pull apart a free-trade agreement (FTA), or to impose new and wide-ranging trade barriers, without congressional approval.

For almost a century, American trade policy has been formed and implemented by a successful "gentlemen's agreement" between Congress and the president. Congress delegated to the president some of its Article I, Section 8 powers to "regulate Commerce with foreign nations" so that the president may efficiently execute our domestic trade laws. The president negotiates and signs FTAs with foreign countries, while Congress retains the ultimate constitutional authority

over international trade, for example by approving or rejecting agreements or by amending U.S. trade laws.

As a result of this compromise, the United States has entered into 14 Free Trade Agreements with 20 different countries and imposed targeted unilateral trade relief measures — all without significant conflict between Congress and the President.

The question now is whether Mr. Trump, as president, could and should single-handedly implement his trade agenda on Jan. 20, 2017 without *any* congressional action.

President-elect Trump has threatened to unilaterally withdraw from NAFTA, the World Trade Organization (WTO), and other U.S. trade agreements, and to impose massive tariffs on U.S. trading partners by using dusty provisions of U.S. law that were never intended for such purposes.

Doing so, however, would raise serious legal problems.

The president could, for example, exercise his lawful authority to withdraw the U.S. from NAFTA under Article 2205 of the Agreement, but that would open the door for Mexico and Canada to immediately be free of any and all trade concessions they've made that currently benefit the United States.

In addition, it's unclear whether the United States would be free to do the same, because the NAFTA Implementation Act, passed by Congress and signed into law by President Clinton in 1993, might still be in effect. As a result, the president could instruct his agencies to raise U.S. trade barriers to non-NAFTA levels, while the courts will say Congress never delegated that authority.

U.S. trade law is riddled with other, similarly-problematic ambiguities — ones that affect all of our trade agreements and many trade defense mechanisms. Such ambiguities should be resolved first, before a new president acts unilaterally and creates a situation with dire economic and constitutional implications.

Recent studies by the [U.S. International Trade Commission](#) and the [Congressional Budget Office](#) find an economic consensus that our trade agreements have produced lower prices, significant national gains in gross domestic product, jobs, and wages, but concentrated losses among a small minority of U.S. workers and industries. Whether the latter should outweigh the former is a subject of legitimate political debate — one that President-elect Trump deserves to have during his tenure.

On the other hand, exploiting ambiguities in the current web of U.S. trade laws to enact the president's trade priorities by executive fiat could engender opposition from Congress, the U.S. business community and U.S. trading partners, thus leading to court challenges similar to those filed by the Republican Congress against President Obama's executive actions on immigration.

The crucial difference, however, is that the months of uncertainty surrounding the trade challenges would imperil trillions of dollars worth of goods and services, especially if the courts refused to enjoin the executive branch from acting while any such litigation is pending.

There is a better way. Congress should act quickly to clarify ambiguities in U.S. trade law. At the same time President-elect Trump — instead of starting trade wars — should pursue a new bilateral trade agreement with Great Britain. He should work with Congress on tax and regulatory reform that will stimulate U.S. job production, and, without circumventing Congress, should work with Mexico and Canada in breaking down any remaining barriers to the trade of U.S. goods. The alternative could be not only economic catastrophe, but also a potential constitutional crisis.

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