MarketWatch

Opinion: How much can Trump do by himself to fix trade deals?

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President-elect Donald Trump calls himself a free-trader. That self-assessment would appear to depend on what the meaning of "free" is. There is nothing Trump has said during the 2016 presidential election campaign or in its aftermath to suggest that he favors the voluntary exchange of goods and services among nations.

Over the years, Trump has flip-flopped on everything from political affiliation (Republican, Democrat, Independent) to issues (a woman's right to choose) to wives (three so far). But the one constant dating back at least to the 1980s is his protectionist stance on trade. **In Trump's world,** trade is a zero sum game.

Now that Trump is president-elect, we need to take **a closer look at his threats** to punish companies that leave the U.S. and countries that run trade surpluses with the U.S. Does Trump have the unilateral authority to do what he says he will do under the power vested in him as president of the United States?

The short answer is this: The president does have broad unilateral authority to negotiate trade deals. Over the years, Congress has delegated some of its constitutional power to "regulate Commerce with foreign nations" to the president, who is charged with implementing foreign policy.

There are loads of impediments — legal, economic, political, practical — to the actual exercise of that power, including Congress' role in approving any agreement negotiated by the president.

Let's take a look at a few **the more outrageous claims** Trump has made and put them to the test.

1. "We're going to have to impose a major tax on companies that leave" the U.S.

Even if Trump is using the royal "we," the president does not have the authority to target individual companies with punitive taxes.

"There is no law expressly permitting the imposition of tariffs on specific 'outsourcing' companies or based on a list of objective 'outsourcing criteria,'" says Scott Lincicome, a trade attorney with White & Case and an adjunct scholar at the Cato Institute. "It would require a very broad interpretation of existing law." **Read White & Case's report on trade policy under Trump.**

The president can set in motion a process to institute taxes and countervailing duties on goods as a remedy for dumping, for example. But **singling out a specific company** for punishment would be the equivalent of an unconstitutional bill of attainder, according to Lincicome.

2. "I am going to instruct my Treasury Secretary to label China a currency manipulator."

Trump has repeated threatened to tax any country that devalues its currency, pointing a finger at China for trying to give its manufacturers a competitive edge.

Hopefully the new president will receive a briefing from his Treasury secretary on recent foreign-exchange developments once he takes office. For over a year, the People's Bank of China has been doing the opposite of what Trump claims: selling foreign currency in exchange for yuan **USDCNY, -0.1223%** in an attempt to slow the effects of capital flight.

"The Treasury Department has come up with three criteria to judge if a country is engaged in currency manipulation," says Dan Griswold, co-director of the Program on the American Economy and Globalization at George Mason University's Mercatus Center.

"China meets one of the three," putting it behind Japan, Korea and Germany, for example, on the potential manipulator's list.

When the Treasury last analyzed foreign-exchange policies of the U.S.'s major trading partners for its semiannual report in October, it found that **no country satisfied all three criteria.** China's single infraction was its large bilateral trade surplus with the U.S. It got a pass on the other two criteria: China is no longer engaged in one-sided foreign-exchange intervention, and its "material" current account surplus had shrunk.

3. "I'm going tell our NAFTA partners that I intend to immediately renegotiate the terms of that agreement to get a better deal for our workers." If they don't agree, "I will submit notice under Article 2205 of the NAFTA agreement that America intends to withdraw from the deal."

Modern bilateral trade agreements are pretty “open-ended in terms of presidential authority,” but a multilateral deal such as NAFTA “complicates withdrawal and modification,” Lincicome explains.

“It’s theoretically possible for the president to withdraw the U.S. from NAFTA; what it triggers is unclear.”

Would it terminate the foreign-trade agreement? Canada and Mexico could continue to operate with each other — without the U.S., Lincicome says. In terms of the U.S.’s commitments under the law implementing NAFTA, “the law is far from clear.”

Any attempt by Trump to withdraw unilaterally from NAFTA would have adverse economic repercussions and introduce the dreaded “uncertainty” into the mix. For a president committed to boosting the economy’s growth rate to 3% or 4%, the president-elect might want to consider some of his more extreme views on trade.

Besides, Trump’s standard refrain that NAFTA is “the single worst trade deal ever negotiated” isn’t supported by facts. **Various studies have concluded** that **the net effect of free-trade agreements is positive.**

Yes, free trade has widespread benefits and concentrated losses. The losses are more visible — shuttered factories, unemployed workers — while the benefits of trade go mostly unnoticed. Competition drives innovation and productivity. Consumers and businesses get to chose from a wide variety of goods at the lowest possible prices. Real wages rise, as do output and hiring.

NAFTA couldn’t have been that bad because it served as a “template or model” for the new generation of foreign-trade agreements negotiated by the U.S. and for subsequent multilateral agreements, according to a **2015 Congressional Research Service report.**

Imagine if Trump, who extols his prowess as a deal-maker, were to use his considerable talents to negotiate with, say, community colleges to develop a program to retrain workers for the jobs of tomorrow. With that and some hard data in hand, he might even have an epiphany on the value of trade.