

FINANCIAL REVIEW

The power of a president Hillary Clinton or Donald Trump

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Hillary Clinton appears on track to win the US election, but if Donald Trump achieves a boil over how much unilateral power could the unpredictable mogul wield as leader of the free world?

As it turns out, Mr Trump could invade another country, slap import restrictions on foreign goods and shake up a host of other policies without the approval of Congress.

The defence and trade clout of the president are especially relevant to Australia. The US is Australia's closest security ally and the 2005 bilateral trade deal made America one of the country's largest trade partners and biggest foreign investor.

In the past, president Bill Clinton – husband of Mrs Clinton - slapped a tariff on Australian lamb of up to 40 per cent in 1999. BHP Billiton was hit with a 30 per cent steel tariff by president George W. Bush in 2002.

The US constitution is supposed to restrain the power of the president, through the legislative prerogative of the House of Representative and Senate, as well as the judicial authority of the Supreme Court.

Nevertheless, the growing use of executive presidential powers over the past few decades gives the commander in chief considerable autonomy.

"Unfortunately under the precedents established by both Republican and Democratic presidents – and approved by Congress - you can exercise quite a bit of discretion," said Randy Barnett, a constitutional law professor at the Georgetown University Law Center.

President Barack Obama, blocked by Republicans in Congress for the past six years, has increasingly relied on executive actions to clamp down on emissions from coal-fired power plants and to protect millions of illegal immigrants from deportation.

If Mrs Clinton wins the election she will likely face a Republican-controlled House, leading to more legislative gridlock.

On trade, a president would not be able to change existing international trade agreements without the approval of partner countries and the Congress.

Mr Trump has threatened to renegotiate the North American Free Trade Agreement with Mexico and Canada.

Nevertheless, he could reject signing new trade deals, such as if Congress authorised the Trans-Pacific Partnership.

The president can exercise several other nuisance powers to restrict foreign imports.

Daniel Pearson, a senior fellow in trade policy at the free-market Cato Institute and a former International Trade Commission commissioner, said a "president who wants to make mischief can do a lot of damage, especially in slowing imports".

"Frankly, I have concern about what Trump might do in regard to using administrative means to restrict imports," he said.

For example, administrative options available to the president include requiring certain imports such as steel to enter through a specified port on a particular day and be cleared by customs slowly, stricter quarantine rules for food and agriculture and raising safety concerns about ocean vessels trafficking imports.

The president could also pursue World Trade Organization dispute settlement action against a foreign country's policies that might violate WTO commitments.

Australian miner BHP Billiton was hurt by president Bush's tariff of up to 30 per cent on imported steel in 2002.

The tariffs were imposed to fulfil an election commitment by vice-presidential candidate Dick Cheney to steel markers in West Virginia in the 2000 election.

It took nearly two years for the tariff to be eliminated, after a successful appeal to the WTO.

The US Congress has not formally declared war since World War II.

A president Trump or Clinton could probably sidestep the legislature all together to take military action overseas, or could seek a watered-down authorisation to use military force such as president Bush did in 2002 to invade Iraq.

As a senator Mrs Clinton voted for the authorisation of force against Iraq, a power that stops short of a declaration of war.

In 1999 under president Clinton the House failed to pass an authorisation for air and missile strikes against Serbians fighting in Kosovo, but the US joined The North Atlantic Treaty Organisation bombing campaign anyway.

Mr Trump threatened to use the Department of Justice to punish corporate critics, including Amazon founder and owner of The Washington Post, Jeff Bezos.

"He's expressed considerable willingness to use the powers of the administrative state to accomplish his objectives or to punish his domestic enemies," Mr Pearson said.