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Donald Trump's Selective Trade War

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Donald Trump repeatedly promised voters in Michigan and elsewhere that if elected president, he would impose a 35% tariff on Fords imported from Mexico if the company goes ahead with plans to update and expand Mexican factories.

Trump threatened to impose the same tariff on Carrier air conditioners from Mexico, advised boycotting Oreo cookies because Nabisco has a Mexican subsidiary and even boasted, "We're going to get Apple to build their damn computers in this country instead of other countries."

He can't do that. No U.S. president has any right to tell private companies where they can produce or invest. More obviously, no U.S. President has the *legal authority* to impose targeted tariffs or taxes on specific firms — simply to punish business decisions he doesn't approve of.

When threatening a targeted 35% tariff on Carrier, Trump explained, "I am going to get consensus from Congress, and we're going to tax you (meaning Carrier, but actually its customers) when those air conditioners come."

But a president needs more than a consensus to unilaterally repudiate the North American Free Trade Agreement and many related laws (including treaties with Canada) or to withdraw from the World Trade Organization.

Even if such treaties were somehow abrogated by executive fiat, the president would still have no authority to impose a tariff on imports from one specific country (Mexico) by one specific company (Ford or Carrier).

Trump presumes that the president has autocratic authority to impose taxes on imports to punish specific private enterprises and thereby help their competitors. Yet such selective, punitive tariffs would clearly violate the equal protection component of the Fifth Amendment's Due Process Clause and would probably also be constitutionally prohibited as a bill of attainder (Article I, Section 9).

Trump's proposal to misuse presidential power to punish disfavored U.S. companies is particularly glaring in the case of Ford. His threat of trade sanctions against Ford raises three serious questions:

1. Why does Trump claim that the U.S. auto industry is rapidly declining?

U.S. production of cars and trucks more than doubled since 2009 — rising from 5.7 million vehicles to 12 million by 2015. The U.S. exported over 2.1 million cars in 2014 and is now the world's third largest auto exporter, after Germany and Japan. (Mexico ranks seventh.)

U.S. vehicle exports to Mexico rose from 101,080 in 2009 to 151,902 in 2014. There were 919,600 U.S. jobs in manufacturing vehicles and parts last December, but only 19% of those jobs were in Michigan (which has lost jobs to many other states, such as Ohio and Kentucky).

2. Why does Trump single out Ford for criticism and punishment?

General Motors plans to invest $5 billion in Mexico — twice as much as Ford — yet Trump is silent about GM. Nearly all of the 13 companies producing vehicles and parts in the United States produce some vehicles and/or parts in Mexico.

The traditional "Big Three" automakers have engaged in joint production in Canada and Mexico for decades (Ford has been in Mexico since 1925), so nearly all their cars contain parts from all three countries. Yet Trump never threatened to slap 35% tariffs on cars made in Canada like the Ford Edge and Flex, Lincoln MKX and MKT, and Chevy Camaro, Equinox and Impala.

3. Why does Trump focus trade warfare plans on Mexico, never Europe?

Trump says, "I don't mind trade wars when we're losing $58 billion a year," referring to the trade deficit. But the U.S. ran a much larger deficit of $130 billion with the euro area in 2015 — including $74 billion with Germany alone.

The euro and Japanese yen have been weak — much weaker than even the Chinese yuan — yet Trump has not been nearly so enthusiastic about launching a reciprocal trade war with Europe or Japan as he has with Mexico. Why not?

One reason may be that Mexican industry — though not growing as fast as U.S. industry — is not stagnant or declining. From early 2010 to late 2015, according to the Organisation for Economic Co-operation and Development, industrial production rose 9.6% in Mexico — not bad, though not as strong as the 13% gain in the U.S. In the same period, however, industrial production *fell* 2.7% in Japan and was up only 2.6% in Europe.

Donald Trump's proposal to apply tariffs in a discriminatory fashion to specific firms in specific countries is unprecedented. Until now, tariffs have been applied to entire classes of products, such as light trucks or tomatoes, not to specific products made by U.S.-chartered corporations in a particular country.

Trump calls his vindictive plan a "tax," pretending that it would hurt nobody but Ford and Mexico. But it would really be a 35% sales tax paid by U.S. consumers. The main effect of any tariff is to (1) raise the cost of production for U.S. companies using imported parts or materials, making U.S. industry less competitive, and (2) raise the cost of living for American consumers, making us all poorer.

The idea that forcing Americans to pay more for less could "save jobs" is economic nonsense. Tariffs are all pain and no gain. And *selective* tariffs against specific companies would be imperious and blatantly unconstitutional.

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