



# Issue Brief

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## Bipartisan Reform Bills Aim to Control Trade Taxes

By: Revana Sharfuddin

### Introduction

With all the talk about President Trump's erratic approach to tariffs and import restrictions, the power of Congress to reassert itself in trade policy is often overlooked. Several pieces of recently-introduced legislation seek to reclaim power ceded to the President in order to better protect the fragile system of international trade that has supported America's post-World War II economic growth.

Congress generally has the power to impose and collect taxes under Article I, Section 8 of the Constitution. Through legislative acts during the Cold War, some of this authority was ceded to the executive branch. Several pieces of legislation dating back more than 50 years have allowed an increasingly aggressive executive branch to impose tariffs or limit imports without Congressional oversight on grounds such as "national security," "serious injury" to domestic industry, and "unfair" competition. These categories are broad enough that they could be inappropriately used to justify nearly any tariff.

For example, the Trump administration has imposed 25 percent tariffs on steel and aluminum and has opened investigations for proposed tariffs on uranium, automobiles, SUVs, light trucks, and automobile parts. Additionally, existing legislation has allowed the administration to impose tariffs on \$250 billion in imports from China and to propose tariffs on another \$267 billion in imports from China. In response to the unprecedented use of this authority, legislators have come up with half a dozen bipartisan trade reform bills to restore Congressional oversight of tariffs in order to rein in potential abuse of power in the future. In this paper, we analyze these pieces of legislation to assess their impact on trade policy.

## Areas for Reform

These pieces of legislation focus on amending language from previous statutes that has been stretched to expand Presidential power and reduce Congressional oversight. Existing statutory provisions that are ripe for reform include:

- Section 232 of the Trade Expansion Act of 1962, which gives the executive branch the ability to levy quota or tariff on export following a Commerce Department investigation to “determine the effects on the national security of imports.” The law was amended in 1980 to provide for Congressional disapproval of tariffs or restrictions of petroleum or petroleum product imports.
- Section 201 of Trade Act of 1974, which allows the President to grant temporary import relief, by raising import duties or imposing nontariff barriers on goods entering the United States that “injure or threaten to injure” domestic industries.
- Section 301 of Trade Act of 1974, which authorizes the President to take all appropriate action, including retaliation, to obtain the removal of any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.

The legislation analyzed here generally strengthens Congressional oversight in one or more of these areas.

## H.R. 5281: Global Trade Accountability Act of 2018 & S. 177: Global Trade Accountability Act of 2017

Cosponsors: 23 in the House & 5 in the Senate

H.R. 5281 and S. 177 would provide for Congressional review of the imposition of duties and other unilateral trade actions by the executive branch. Before a trade action would go into effect, the bill requires the President to submit a report to Congress with an analysis of a proposed trade action, including whether the action “is in the national economic interest of the United States.”

## Key Facts:



President Trump’s trade war has raised concerns in Congress about executive power.



Lawmakers of both parties have introduced legislation that would significantly alter trade policy.



While the bills differ, they share the broad goal of empowering Congress to play a larger role in trade, reducing unilateral executive power.

Trade Reform Legislation in the 115th Congress					
Bill	Sponsor	Restores Congressional Review of Sec. 301 Tariffs	Restores Congressional Review of Sec. 232 Tariffs	Restores Congressional Review of Sec. 201 Tariffs	Enforcement Mechanism
H.R. 5281/S.177	Sen. Mike Lee, Rep. Warren Davidson	✓	✓	✓	Requires Congressional Approval
H.R. 5760	Rep. Ron Kind	✓	✓	✓	Tariffs Take Effect Unless Congress Disapproves
H.R. 6337/S.3013	Sen. Bob Corker, Sen. Pat Toomey, Rep. Mike Gallagher		✓		Requires Congressional Approval
H.R. 6923	Rep. Mark Sanford, Rep. Jim Cooper	✓	✓	✓	Tariffs Take Effect Unless Congress Disapproves
S. 3266	Sen. Doug Jones				Suspends the “National Security” Investigation of Automotive Imports, Requires ITC Study
S. 3329	Sen. Rob Portman, Sen. Doug Jones, Sen. Joni Ernst, Sen. Lamar Alexander		✓		Tariffs Take Effect Unless Congress Disapproves

The trade action would not go into effect until Congress enacted a joint resolution of approval. The bill does allow for an exception of 90 days temporary authority (without renewal) of the President in case of national emergency, imminent threat to health or safety, necessary for the enforcement of criminal laws or necessary for national security.

The Trump Administration has imposed tariffs to protect certain businesses, while overlooking the negative impacts they have on other businesses. Sen. Lee argued that the Global Trade Accountability Act would restore Congress’s oversight to the process, ensuring that the broader impact of tariffs is considered. Lee said, “Congress has ceded far too much lawmaking power to the Executive branch including the power to unilaterally raise tariffs. Sudden hikes in trade barriers could wreak havoc on many small and midsize manufacturers in my home state of Utah that rely on imports and globally connected supply chains. Congress must be involved in any decision that would increase barriers to trade.”

### **H.R. 5760: Trade Authority Protection Act**

Cosponsors: 15

Introduced by Rep. Ron Kind (D-WI) with Reps. Ralph Norman (R-SC), Gregory Meeks (D-NY) and Charles Dent (R-PA), this bill provides for Congressional review of the imposition of duties and other trade measures taken by the executive branch. Like the Global Trade Accountability Act, the bill would require the President to submit a report to Congress with the details of the

proposed trade action. Congress would then have 60 days to pass a joint resolution of disapproval, otherwise, the action would take effect.

Drawing on the power vested in Congress in Article I, Section 8 of the Constitution, Rep. Ron Kind stated, “Major overhauls to trade policy are not successfully completed without full collaboration and cooperation between the Administration and Congress. It’s time that Congress steps up to the plate, and uses the powers granted by our Constitution to collaboratively shape U.S. trade policy.”

## **H.R. 6337 & S. 3013**

Cosponsors: 23 in the House & 16 in the Senate

H.R. 6337 and S. 3013 require the President to submit to Congress any proposal to adjust imports in the interest of national security under Section 232. The proposals would establish a 60-day period during which a resolution of approval could be considered under expedited procedures. They also provide for retroactive application of the approval process to Section 232 trade actions implemented over the previous two years.

The Trump Administration has proposed a wide range of tariffs to protect certain favored industries, but higher trade taxes also inflict harm on other domestic industries. For one example, Rep. Gallagher worries that there is a possibility of local producers such as Harley Davidson moving overseas because of the impact of tariffs. Sen. Corker, Chairman of the Senate Foreign Relations Committee, said, “While we all agree on the need to ensure the international trade system is fair for American workers, companies and consumers, unfortunately, the administration is abusing the Section 232 authority delegated to the president by Congress. Making claims regarding national security to justify what is inherently an economic question not only harms the very people we all want to help and impairs relations with our allies but also could invite our competitors to retaliate. If the president truly believes invoking Section 232 is necessary to protect the United States from a genuine threat, he should make the case to Congress and to the American people and do the hard work necessary to secure Congressional approval.”

## **H.R. 6923: Promoting Responsible and Free Trade Act**

Cosponsors: 1

Introduced by Representatives Mark Sanford (R-SC) and Jim Cooper (D-TN) this bill would require reports to Congress regarding tariffs proposed under Sections 202, 301, and 232 of U.S. trade law. Congress would have 60 days to enact a resolution of disapproval, otherwise, the tariffs would go into effect. There is a 2-year retroactivity period for Section 232 tariffs.

“Our bipartisan bill gives Congress the authority to weigh in on tariffs before they are implemented,” Rep. Cooper said, “No President should have unlimited powers, especially when those powers are hurting innocent farmers and businesses.”

## **S. 3266: Automotive Jobs Act of 2016 and H.R. 3266: Automotive Jobs Act of 2016**

Cosponsors: 4

Introduced by Sen. Doug Jones (D-AL), Sen. Lamar Alexander (R-TN), Sen. Lindsey Graham (R-SC), and Sen. Bob Corker (R-TN), this bill proposes to suspend President Trump's tariff on European automobiles. The U.S. Commerce Department initiated a Section 232 investigation in May to determine whether imported cars, trucks, and parts are a threat to U.S. national security. This legislation would suspend that investigation pending the outcome of a new analysis by the International Trade Commission (ITC) of the "well-being, health, and vitality" of the United States automotive industry. Sen. Jones said, "The President's proposed auto tariffs have the potential to inflict serious damage on a booming industry in my state and other leading auto-producing states like Tennessee."

## **S. 3329: Trade Security Act of 2018**

Cosponsors: 6

Introduced by Sen. Rob Portman (R-OH), Sen. Doug Jones (D-AL), Sen. Joni Ernst (R-IA), and Sen. Alexander Lamar (R-TN), this bill proposes to amend Section 232 of the Trade Expansion Act of 1962 to ensure that assessments of a "national security" basis for trade actions is made by the Secretary of Defense, rather than the Secretary of Commerce under current law. It limits the Secretary of Commerce's involvement to consultancy. This bill would also expand the use of the existing disapproval resolution process regarding trade restrictions on petroleum to all types of products.

Sen. Portman said: "I have repeatedly expressed concerns about the misuse of the Section 232 statute to impose tariffs on automobiles and auto parts, and its impact on Ohio jobs and the U.S. economy as a whole. This bipartisan legislation maintains this trading tool while properly placing the national security designation at the Department of Defense and expanding the role of Congress in the process. As a former USTR, I know that misusing our trade tools not only hurts our exports and our manufacturers, but also our consumers ...."

## **Conclusion**

These bills show that there are a wide range of options on the table that Congress can use to provide some much-needed oversight of unilateral executive branch trade restrictions. According to incoming Senate Finance Committee Chairman Chuck Grassley (R-IA), "Maybe the definition of national security or maybe the conditions under which national security could be used as an excuse is a little wide." Clearly, a large number of lawmakers agree. Bipartisan cooperation has the potential to return oversight of tariff implementation to its proper place: the halls of Congress.

## **About the Author**

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