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Article

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John J. Forrer and
Kathleen Harrington

The Trump Administration's Use of Trade Tariffs as Economic Sanctions

OVERVIEW

The Trump administration's enthusiasm for economic sanctions has been reflected in their equally passionate embrace of trade tariffs. Both foreign policy tools have been used to excess well beyond the practices of past administrations. Even most notable is the unprecedented re-purposing of trade tariffs as economic sanctions. Rather than using tariffs as intended by statute to adjust conditions for imports in response to unfair practices with trade partners, the Trump administration has threatened and imposed tariffs to pressure countries to change policies they oppose – the exact rationale behind the use of economic sanctions. The use of trade tariffs as economic sanctions raises important questions about the legitimacy and effectiveness of such a practice.

TRUMP ADMINISTRATION'S AGGRESSIVE USE OF ECONOMIC SANCTIONS

The Trump administration's use of economic sanctions is best characterized as aggressive, particularly when compared to previous administrations. Economic sanctions have become a go-to foreign policy tool to support its 'America First' foreign policy strategy. According to the US Treasury Department data, in 2017, the United States placed sanctions on 1,500 people, companies, and entities (Harrell 2019). This is 50 percent more than has ever been added to

the US Treasury's Specially Designated Nations and Blocked Persons List (SDN) in any single year, based on an analysis by the law firm Gibson Dunn (2019). The majority of these sanctions were related to nuclear-related sanctions on Iran, enhanced sanctions against Russia, and sanctions on Venezuelan people and entities (Gibson Dunn 2019).

The analysis shown in Figure 1 provides a clear visual of the uptick in sanctions during the Trump administration. In the years 2017 through 2018, there is a dramatic increase in additions to the Specially Designated Nations and Blocked Persons list. Compare that sharp sloping increase from 2017–2018 to the ebb-and-flow rhythms that characterized the experience earlier in this century during the Bush administration (2002–2009) and the Obama administration from 2009 to early 2016. Neither the Obama nor Bush administrations made more than 800 additions to the SDN list during their entire tenure, but the Trump administration quickly exceeded the 800 actions cap characteristic of previous administrations.

Fundamentally, sanctions are a collection of tools designed to inflict economic losses on countries, institutions, and/or individuals sufficient to induce a sought-after change in policy and behavior. The US Office of Foreign Assets Control (OFAC) defines sanctions as both broad-based and oriented geographically, which would include the tariffs against countries such as Cuba and Iran, while other forms of sanctions are considered more 'targeted'. These targeted sanctions are applied in cases of counter-terrorism, counter-narcotics and focus on specific individuals and entities. These programs may encompass broad prohibitions at the country level as well as sanctions directed at specified targets (US Department of the Treasury 2018). Sanctions are one of many government tools available to further specified national security and foreign policy goals.

In addition to a disproportionate reliance on economic sanctions as the favored foreign policy tool, there has been enhanced use of secondary sanctions by the Trump administration. Secondary sanctions are a tool designed to push foreign countries, companies, and individuals into halting business dealings with countries and entities on which primary economic sanctions have been imposed (Harrell 2019). This aggressive push is evident in countries such as Venezuela, where US National Security Advisor John Bolton threatened sweeping bans on companies and individuals attempting to

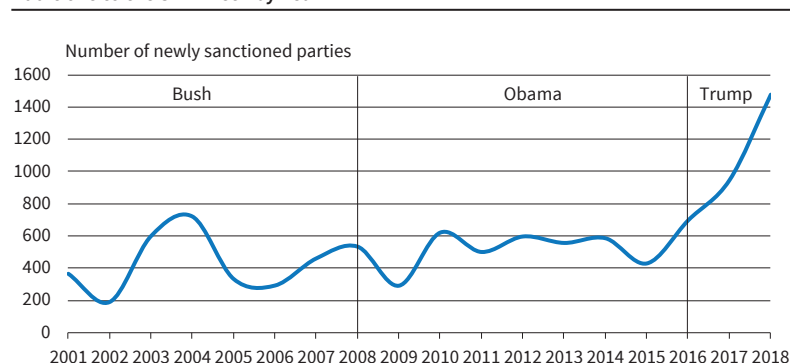


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Figure 1
Additions to the SDN List ^a by Year



^a US Treasury's Specially Designated Nations and Blocked Persons List.
Source: Gibsondunn.com; US Department of the Treasury.

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conduct business in Venezuela; bans that applied across hundreds of companies and individuals (Goodman and Smith 2019). The broad scope of secondary sanctions, such as those applied to Venezuela, cause significant fringe damage to allied countries such as Spain and France, countries who still have oil and aviation companies operating in Venezuela. Or the threats of secondary sanctions against every country that conducted commerce with Iran following the US abrogation of their participation in the Joint Comprehensive Plan of Action (JCPOA) – see also Calamur (2018).

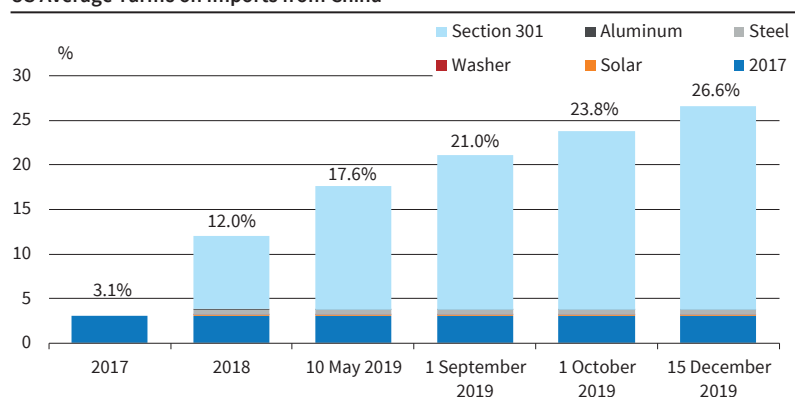
The Trump administration's liberal use of primary and secondary sanctions is a tool to compel others to adhere to US national security and foreign policy goals. The Trump administration's corresponding aggressive use of trade tariffs has lured what has been a clear distinction between sanctions as applied through the US Treasury Department and tariffs pushed forward through the United States Trade Representative (USTR) and the US Department of Commerce. Employing these two separate foreign policy tools as one in the same raises question: should tariffs and sanctions be used in a similar way and with similar justifications, and if they are being used in similar ways, what effect might the dual-use purpose of these foreign tools have on effectiveness of US foreign policy?

USE OF SANCTIONS AND TRADE TARIFFS

Similar to its expansive use of economic sanctions, the Trump administration has also imposed trade tariffs on allies and adversaries at an alarming rate. USTR has announced not only more tariffs in terms of volume of products globally, but the executive body has also applied tariffs at a higher percentage level (Office of the United States Trade Representative 2019). A more specific example of this ramping up of tariffs is exemplified through the tariffs imposed on China. The Peterson Institute for International Economics developed two graphics to showcase the ramp-up of the China tariffs.

Figure 2 highlights the increased percentage of the tariff rate threatened by the Trump administration

Figure 2
US Average Tariffs on Imports from China



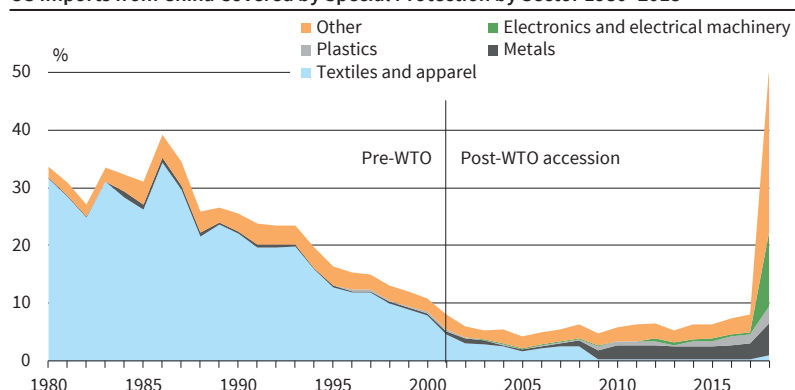
Source: Based on data from Bown (2019); author's calculation.

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throughout the year. Increasing how much a product is taxed is one method of using tariffs aggressively, and China's exports into the United States were threatened by increasingly high percentages of tariff tax rates. Along a similar vein, Figure 3 highlights the percentage of US imports from China subject to special US trade protection. The United States has maintained a special protection tariff towards China since the 1980's, but this figure highlights how much more expansive this special tariff has become in the Trump administration (Bown and Zhang 2019b). In essence, the administration is threatening to apply the special tariff protection on more products being imported from China. Both the percentage rate of the tariff and the amount of imports affected by the tariffs have are markedly higher, revealing an aggressive use of tariffs. Threatened tariff rates and volumes are used by the Trump administration as leverage points to further an 'American first' economic policy, and in response to China's unfair trade practices related to the forced transfer of American technology and intellectual property (Office of the United States Trade Representative 2019).

In their use of tariffs against China and in numerous other instances, the Trump administration

Figure 3
US Imports from China Covered by Special Protection by Sector 1980–2018



Source: Bown and Zhang (2019b).

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flaunts trade tariffs as a foreign policy tool used for similar purposes as economic sanction. The use of tariffs as economic sanctions raises serious questions about the statutory authority and intended goals of this familiar foreign policy tool. Evidence of the Trump administration's sanctions-like use of tariffs is best demonstrated through the tariff taxes applied on Turkey. The 'Turkey tariffs' highlight the increasingly nebulous and nefarious roles tariffs play in the administration's foreign policy. The first of the tariffs affecting Turkey began on 8 March 2018, when President Trump issued a Presidential Proclamation to impose an overall 25-percent ad valorem tax on steel articles imported to the United States from abroad (The White House 2018a). This was applied broadly, across a number of countries.

However, a second presidential proclamation was issued a few months later, on 10 August 2018. This proclamation set to adjust imports of steel into the US, but this time, the proclamation was targeting specific countries. This second proclamation (the August 10 proclamation) had the stated and legally authorized goal of increasing domestic capacity utilization and ensuring the viability of the domestic steel industry (The White House 2018b). The Proclamation investigation conducted by the US Department of Commerce recommended that a tariff be applied on certain countries, and Turkey was specifically targeted. Turkey is one of the major exporters of steel for domestic use in the United States. Using executive authority granted through Section 232 of the Trade Expansion Act of 1962,¹ the tariff levels determined in this August 10 proclamation went into effect. The United States imposed a 50-percent ad valorem tariff rate on steel articles imported from Turkey, a dramatic doubling of the previous 25-percent tariff imposed in March.

The tariffs on Turkey illustrate their creep into the realm of sanctions. The tariffs have an underpinning justification of national security, a territory typically reserved for sanctions. Invoking the national security clause of the Trade Expansion Act to justify sanctions on Turkey is not credible and it is clear the tariffs were imposed to cause economic hardship on Turkey. Also, the messaging surrounding these tariffs also was more aligned with the furtherance of foreign policy goals typically befitting a sanction. External messaging through social media outlets such as Twitter explicitly stated that the tariff was punishment on Turkish political actions. An August 16, 2018 tweet from Donald Trump's handle @realDonaldTrump proclaimed the ad valorem tariffs imposed just six days before were a reaction to Turkey's detainment of Pastor Andrew Brunson, a major foreign policy concern happening at the same time. The tweet states "we will pay nothing for the release of an innocent man, but we are cutting back

on Turkey!" 'Cutting back' signals the effects of the ad valorem tax: reducing Turkish steel imports by the United States. Such a justification was absent from the official Presidential Proclamations announcing the tariffs.

Around this same time, in early August the US Treasury Department's Office of Foreign Assets Control imposed sanctions targeting two Turkish officials, Minister of Justice Abdulhamit Gul and Minister of Interior Suleyman Soylu, for their role in the arrest and detention of Pastor Brunson. These sanctions had the explicit goal of forcefully expressing the US' position that Brunson's continued prosecution was wrongful (US Department of the Treasury 2018). The tariffs and sanctions imposed upon Turkey had significant overlap both in timing and intent, and again, highlight the heavy use of both policy tools by the Trump administration, but also the significant crossover of the role of tariffs.

TRADE TARIFFS AS ECONOMIC SANCTIONS: A GOOD OR BAD IDEA?²

The basic justification for economic sanctions is that economic losses that are sufficiently painful will convince another country to change a policy objected to by the sending country. At the same time, countries' vulnerability to economic sanctions vary widely, and may have many viable options that help them evade the actual effects of an economic sanction. At the heart of a successful economic sanctions policy is knowing (i) how much economic suffering is required to compel the target country to yield and make the sought after change in policy; and (ii) an ability to implement sanctions in such a way that results in real economic losses commensurate with the planned level of losses (Forrer 2017).

The determination of the success of economic sanctions is problematic. Research on economic sanction episodes throughout history have struggled to make a definitive case on the role played by economic sanctions in determining the outcomes of the events (Hufbauer et al. 2007; Askari et al. 2003). Once imposed, as long as the offending policy remains intact, sanctions could be viewed as a failed effort. If sanctions are removed before the policy has been revoked, claims of failure or premature action could be offered. And if the policy targeted by sanctions is revoked, sanctions can be highlighted as the reason for the change, even if other factors caused the policy change. As in all situations, 'sanctions don't work until they do'.

The cost-effectiveness of economic sanctions is more easily assessed. Economic sanctions cause

¹ See Public Law 87-794-Oct. 11, 1962, <https://www.gpo.gov/fdsys/pkg/STATUTE-76/pdf/STATUTE-76-Pg872.pdf>.

² The terms trade tariffs and economic sanctions tend to be used interchangeably as both a tool of foreign policy – a foreign policy strategy – and a legal action taken based on an authority granted to a government agency. Our discussion on trade tariffs as economic sanctions addresses the first sense of the terms largely unanticipated by the second sense.

intended and anticipated economic losses to government agencies, firms, and individuals in the sending and target countries. Innocent communities also suffer economic (and personal) losses due to economic sanctions. Since all these losses can be estimated, an assessment could be made as to whether the value of a change in the offending policy is worth the losses suffered by all parties. It also opens up for consideration the question of whether an alternative to economic sanctions would be more cost-effective in achieving the foreign policy goal.

In the context of economic sanctions, trade tariffs might be seen as simply ‘economic sanctions-lite’: rather than banning a specific economic activity, trade tariffs have the effect of raising prices on designate products and services, and thereby discouraging their purchase. But economic sanctions can be designed with great nuance relating to the level of economic losses and who bears those losses. In practice, trade tariffs do not enhance the capacities of a country to stylize sanctions to have the desired effects. In addition, trade tariffs suffer from the same set of design and enforcement challenges faced by economic sanctions that limit their effectiveness:

- Limited enforcement capacities
- Smuggling
- Fraud
- Evasion
- Re-exporting

Trade tariffs offer no more advantages over economic sanctions as the legal instruments used to inflict economic losses on countries in an effort to change their policies. But using trade tariffs as economic sanctions does pervert the established public policy justification for imposing any trade tariff, and thereby undermines public accountability of government actions taken to pursue foreign policy goals.

Placing a tariff on exports from another country raises the price on those goods and services to the consumers in the country imposing the tariffs. The tariff can be in the form of a fixed fee or percentage of the cost per item. The resultant price increase gives an economic advantage to domestic firms compared to foreign exporting firms. Such a market intervention through the use of trade tariffs that are justified by very specific conditions has specific rationales behind this approach.

The adoption of a trade tariff against specific goods and services requires that a finding be conducted that shows evidence of unfair trade practices. Such a finding not only justifies the adoption from a public policy perspective, but the analysis of the trade practices in question provides valuable information to determine the form of the remediate trade tariff. At their core, trade tariffs are justified by correcting an unfair trade relationship between coun-

tries. The scope and scale of the tariff – to accomplish that goal – must be tailored to the specific situation. Trade tariffs are by design intended to correct – or at a minimum remediate – trade relationships that impose an unfair condition on a country. Trade tariffs are justified due to their ability to claim that it is solving an existing problem and making it ‘right’.

Alternatively, economic sanctions are justified by the argument that suffering experienced by the sanctioned country is sufficient to persuade it to alter the offending policy in question. It is recognized that economic pain on innocents will result in both the sanctioning and target countries, but the importance of achieving the foreign policy in question should account for this unavoidable collateral as part of the price paid when using an economic sanction. Economic sanctions are justified by pressuring other countries to adopt desired policies.

But to make matters worse, trade tariffs have become the easiest ‘path of least resistance’ for the Trump administration to adopt foreign policies. In the Trump administration, trade tariffs have become the ‘poor person’s’ economic sanctions. Relying on a clause that allows trade tariffs to be invoked at the discretion of the President, trade tariffs allow a path of least resistance to placing economic sanctions-like activity on countries in dispute with the US, but not necessarily involving trade issues.

CONCLUSION

The use of trade tariffs to impose economic sanctions on other countries may be consistent with the Trump administration campaign of assailing US trade agreements as unfair, and providing a political justification for using trade tariffs as the best remedy, and impinging on the territory of economic sanctions. But the conventional policy justification for using trade tariffs as economic sanctions has been circumvented, undermining public accountability for the actions taken by the government and their effectiveness. Any administration that intends to continue using tariffs as a ‘sanction-lite’ tool should have their use clarified and codified in a revision of existing legislative authority. A legislation change would ideally bring more statutory clarity defining the two economic tools (sanctions and tariffs) and could set a foundation for a more accountable foreign policy approach by and across government agencies. Greater clarity on the boundaries of trade tariffs to advance purposeful US foreign policy would be an available step in that direction.

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