



WISCONSIN LEGISLATIVE COUNCIL

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TO: REPRESENTATIVES DAVID STEFFEN AND PETER BARCA

FROM: Dan Schmidt, Principal Analyst

RE: Questions Regarding Current Events Relating to Foreign Trade Policy and Tariffs

DATE: July 18, 2018

This memorandum responds to your request for information regarding foreign trade policy and tariffs. Specifically, you asked the following questions:

- Generally, which Wisconsin industries are likely to be impacted based on recent [tariff] announcements?
- What actions can be taken at the state level in Wisconsin in response to changes in trade agreements or increases in tariffs that have an adverse impact on state industries?
- Are there other actions or strategies being taken or contemplated in other states?
- Is there any further guidance legislators can offer constituents if we receive contacts about the impact of trade changes on their own businesses?
- What agency or agencies should constituents be referred to for further assistance?

My responses follow in order of each question, as posed, below.

Generally, which Wisconsin industries are likely to be impacted based on recent [tariff] announcements?

According to the International Trade Administration of the U.S. Department of Commerce (ITA), \$22.3 billion worth of goods were exported from Wisconsin in 2017. The three largest export markets for Wisconsin, which account for more than 50% of all state exports, are Canada (\$6.9 billion), Mexico (\$3.2 billion), and China (\$1.7 billion), all of which are currently seeking retaliatory tariffs against the recent imposition of U.S. tariffs on aluminum and steel. I have attached a page of lists that I compiled from data assembled from the World Institute for

Strategic Economic Research WISERTrade database and provided by the Wisconsin Economic Development Corporation (WEDC). The lists contain the 2017 dollar amounts for each of the exports classified by six-digit codes, from the State of Wisconsin that are included in the current retaliatory tariffs for Canada, Mexico, China, and the European Union. For the sake of brevity, I have only included those export codes with dollar amounts that exceeded \$5 million for 2017 in the lists. Based on a summary of this information, it appears that industries producing the following products may be at greater risk of effects due to retaliatory tariffs:¹

Canada:

- Paper products
- Prepared foods
- Upholstered seats
- Pickles
- Water
- Surface cleaners
- Mowers
- Motorboats
- Refrigerator-freezers
- Plastic bags

Mexico:

- Cheese
- Cranberries
- Fans
- Food preparations
- Sausages

¹ Please exercise caution when making assumptions utilizing this data. The data portrayed is based on raw historical export data provided by the Foreign Trade Division of the U.S. Census Bureau. Harmonized Commodity Description and Coding Systems (HS) number data from WISERTrade used to denote export categories is only available to the six-digit level. The HS numbers for commodities on the retaliatory tariff lists may extend to an eight- or nine-digit level of detail. Some of the specific products included in the six-digit category may not be included in the retaliatory tariffs. Thus, the total value of products in any specific category may be overstated in the amount of nontariff products in the category. This data is only intended to provide an estimation of the general categories and dollar amounts that may be affected by the retaliatory tariffs.

China:

- Whey and modified whey
- Ginseng
- Cranberries
- Soybeans

European Union:

- Kidney beans
- Cranberry juice
- Steel pipes
- Corn
- Cast iron or steel

For more detail regarding this retaliatory tariff data, please see the attached lists.

What actions can be taken at the state level in Wisconsin in response to changes in trade agreements or increases in tariffs that have an adverse impact on state industries?

Article I, Section 8 of the U.S. Constitution gives Congress the power to impose uniform tariffs (imposts) for the United States. It states that, among other enumerated Congressional powers, Congress shall have the power:

To lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defence and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States

Despite what appears to be an exclusive jurisdiction, Congress has delegated much of this authority to the executive branch through a number of enactments including:

1. The Emergency Economic Powers Act of 1977. [50 U.S.C. § 1701.]
2. The Trade Act of 1974. [19 U.S.C. § 2101.]
3. The Trade Expansion Act of 1962. [19 U.S.C. § 1801.]
4. The Trading with the Enemy Act of 1917. [50 U.S.C. § 4301.]

In the case of the recent trade actions, President Trump specifically cited Section 232 of the Trade Expansion Act of 1962 [19 U.S.C. § 1862], as the authority for placing tariffs on aluminum and steel imports. This law permits the President to take trade actions following the

investigation and report by the Secretary of Commerce that results in the determination that certain foreign imports may impair national security.²

In addition, the U.S. Supreme Court found that state laws that conflict with Congress's specific delegation of authority to the President, particularly in relation to certain issues of trade, are preempted under the Supremacy Clause of the U.S. Constitution.³

These constitutional requirements reserving trade powers to the federal government significantly limit the actions state legislatures may take in regard to the current tariff situation. Potential actions appear limited to enacting resolutions encouraging Congress or the President to alter federal current policy or the establishment of state programs to reimburse those entities who are financially affected by the tariffs.

Outside of the immediate circumstances, it is noteworthy that the U.S. Trade Representative (USTR) has permitted input from states when finalizing international trade agreements. Following the North American Free Trade Agreement (NAFTA), states were permitted to provide a list of state laws that were to be "grandfathered in" under future free trade agreements. Based on my discussions with staff members of the National Conference of State Legislatures (NCSL), the inquiries for these grandfathered state laws were largely exclusive to governors or state executive branch offices, so state legislatures generally had little input. An option in light of this scenario may be to enact a state law that requires that any state input into future trade agreements receive the formal consent of the legislature.

Are there other actions or strategies being taken or contemplated in other states?

As mentioned in the response to the prior question, a number of states have considered or enacted legislation that requires legislative consent of state input to international trade agreements.⁴ A number of states have also enacted resolutions urging the consideration of state interests in regard to free trade. As an example, the California Legislature recently enacted a resolution, 2017 CA AJR 11, that urges the President and Congress to "keep California's farmers, ranchers, and farmworkers in mind when considering global trade and immigration matters, and to break down barriers to agricultural trade."

Is there any further guidance legislators can offer constituents if we receive contacts about the impact of trade changes on their own businesses?

For constituents seeking to understand the President's current trade policy, the USTR provides a comprehensive review of the policy in chapter 1 of its 2018 Trade Policy Agenda and

² The reports on steel and aluminum were published on January 11 and January 17, 2018, respectively, and are available at the Department of Commerce website: www.bis.doc.gov/232.

³ See *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 371.

⁴ These states include California, Maine, Maryland, New York, New Jersey, Pennsylvania, and Iowa, according to NCSL.

Annual Report.⁵ Otherwise, you may want to encourage them to contact their congressional offices or one of the specific resources listed below.

What agency or agencies should constituents be referred to for further assistance?

In Wisconsin, WEDC is responsible for providing assistance in regard to development of export trade in general.⁶ The Wisconsin International Agribusiness Center (WIAC) in the Department of Agriculture Trade and Consumer Protection is a good agency contact for those in need of assistance in regard to agricultural exports specifically.⁷ WIAC officials indicated that they are currently working on alternative export strategies in the face of the current retaliatory tariffs. There is also state-specific trade data available through the ITA⁸ and the U.S. Census Bureau.⁹

Nationally, the USTR is responsible for the negotiation of trade agreements¹⁰ and the ITA is responsible for enforcement of trade law and promotion of international trade.¹¹ Other federal trade agencies, or agencies with duties related to trade, include the U.S. Department of Agriculture Foreign Agricultural Service,¹² the U.S. Census Bureau,¹³ the U.S. International Trade Commission,¹⁴ and the Small Business Association Office of International Trade.¹⁵ Depending upon specific subject of inquiry, each of these agencies is likely to have information that is helpful to constituents.

Lastly, the World Trade Organization¹⁶ and the International Trade Centre¹⁷ are non-governmental bodies that provide significant resources in regard to international trade and tariffs.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DWS:ksm

Attachment

⁵ See <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2018/2018-trade-policy-agenda-and-2017>.

⁶ See <https://wedc.org/export/>.

⁷ See https://datcp.wi.gov/Pages/Growing_WI/InternationalAgribusiness.aspx.

⁸ See <https://www.trade.gov/mas/ian/statereports/states/wi.pdf> and <https://www.export.gov/State-Trade-Data>.

⁹ See <https://www.census.gov/foreign-trade/statistics/state/data/wi.html>.

¹⁰ See <https://ustr.gov/>.

¹¹ See <https://www.export.gov/welcome> and <https://www.trade.gov/>.

¹² See <https://www.fas.usda.gov/>.

¹³ See <https://www.census.gov/foreign-trade/index.html>.

¹⁴ See <https://www.usitc.gov/>.

¹⁵ See <https://www.sba.gov/offices/headquarters/oit>.

¹⁶ See <https://www.wto.org/> and https://www.wto.org/English/tratop_e/tariffs_e/tariff_data_e.htm.

¹⁷ See <http://www.intracen.org/default.aspx> and <http://www.intracen.org/itc/market-info-tools/tariff-data/>.