



## *Affirmative Case: Repeal Section 421 Tariffs on Chinese Imports*

### *Fact 1: Section 421 Tariffs Discriminate Against Chinese Imports*

*Vivian C. Jones (CRS specialist in international trade and finance) "Trade Remedies: A Primer" Congressional Research Service (March 2012)*

<http://www.aais.org/wp-content/uploads/2015/02/CRS-Trade-Remedies-Primer.pdf>

A country-specific safeguard on imports from China is found in section 421 of the Trade Act of 1974. This provision, enacted in section 103 of P.L. 106-286, superseded section 406 with respect to goods from China after the President extended permanent nondiscriminatory (normal trade relations) treatment to China following its accession to the WTO. The legislation implemented an anti-surge mechanism established under the U.S.-China Bilateral Trade Agreement, concluded on November 15, 1999. This transitional safeguard measure is scheduled to terminate 12 years after China's WTO accession. Although the procedure under section 421 action is similar to that under section 201, the section 421 safeguard is different in four major respects: (1) the statute provides relief for subject merchandise from China only, whereas the remedy in section 201 applies to subject imports from all countries; (2) consultations with Chinese trade authorities are required; (3) in addition to the USITC, the USTR takes part in the procedure and also submits recommendations to the President; and (4) the standard for relief is "market disruption"—a lower standard than in section 201 proceedings.

**EXPLN: Although section 201 of the Trade Act also authorizes the implementation of tariffs, section 421 allows tariffs against China to be subject to a lower evidentiary standard. This lower evidentiary standard unfairly discriminates against Chinese imports.**

### *Fact 2: Section 421 Tariffs Intended to be Temporary*

*Jeanne J. Grimmett (CRS legislative attorney) "Chinese Tire Imports: Section 421 Safeguards and the World Trade Organization (WTO)" Congressional Research Service (July 2011)*

[http://digital.library.unt.edu/ark:/67531/metadc96669/m1/1/high\\_res\\_d/R40844\\_2011Jul12.pdf](http://digital.library.unt.edu/ark:/67531/metadc96669/m1/1/high_res_d/R40844_2011Jul12.pdf)

Section 421 of the Trade Act of 1974, 19 U.S.C. §2451, which implements the China-specific safeguard in U.S. law, was enacted in P.L. 106-286 as part of a package of provisions addressing various issues arising from the accession of China to the WTO. The statute, which also permitted the President to grant most-favored-nation (MFN) tariff treatment to Chinese goods upon China's accession to the WTO, was enacted in October 2000, a little more than a year before China became a WTO member. Section 421 is described in legislative history as "a temporary, extraordinary trade remedy specifically designed to address concerns about potential increased import competition from China in the future." Section 421, related provisions on trade diversion and regulatory action, as well as any regulations issued under



these provisions, will expire 12 years after the date that China’s WTO Accession Protocol enters into force, or December 10, 2013.

**EXPLN: Although Section 421 tariff authorization was intended to be a temporary measure to aid China’s entrance into the WTO, the tariffs remain authorized in US law, as seen in...**

*Fact 3: Section 421 Tariffs Remain Authorized by Congress*

Marcus Noland (Ph.D. Economics from Johns Hopkins University, executive vice president at Peterson Institute for International Economics) Sherman Robinson (former senior economist at the World Bank, senior research fellow at International Food Policy Research Institute)

“Assessing Trade Agendas in the US Presidential Campaign” Peterson Institute for International Economics (private nonpartisan, nonprofit think tank for international economic policy) (September 2016)

<https://piie.com/system/files/documents/piieb16-6.pdf>

Section 421 market disruption safeguards, aimed at China, were phased out in December 2013 under international law by the terms of China’s Protocol of Accession to the WTO, but Section 421 still exists on the US statute books. This is another example where an international agreement is not codified in US domestic law.

**EXPLN: Even though the World Trade Organization no longer recognizes the right for the US to implement China specific tariffs, Section 421 remains in US law and can be used by the president until removed, as seen in...**

*Impact 1: Lower Evidentiary Standards Decrease Presidential Accountability*

Marcus Noland (Ph.D. Economics from Johns Hopkins University, executive vice president at Peterson Institute for International Economics) Sherman Robinson (former senior economist at the World Bank, senior research fellow at International Food Policy Research Institute)

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Since the legislation to implement NAFTA and other FTAs, as well obligations under the WTO, was enacted by Congress, which also approved normal trade relations with China upon its accession to the WTO in 2001, the question arises whether a President Trump could unilaterally carry out his threats. The short answer, at least in the short term, is “yes,” both because of the president’s constitutional power over foreign affairs and because multiple statutes enacted by Congress over the past century authorize the president to impose tariffs or quotas on imports and regulate foreign commerce in other ways as well.

Conceivably, President Trump might also invoke Sections 201 and 421 of the Trade Act of 1974. However, safeguard tariffs imposed pursuant to Section 201 require an affirmative finding of



injury to a US industry by the US International Trade Commission (USITC) prior to presidential action; moreover, a USITC report covering a broad category of imports would take a fair amount of time. If the USITC finds no injury the president has no authority to act under Section 201. Once the USITC issues an affirmative finding of injury, the president can impose whatever restrictions he chooses— he is not bound by the USITC’s specific recommendations.

**EXPLN: Although Section 201 and Section 421 of the Trade Act both authorize the President to implement tariffs, Section 421 provides minimal presidential accountability in comparison to Section 201 due to its lower evidentiary standard. For Section 201 tariffs to be implemented, the U.S. International Trade Commission must find “material injury” to the United States. For Section 421 tariffs to be implemented, the U.S. International Trade Commission must find “market disruption.”**

*Impact 2: Lower Evidentiary Standards Enable Ineffective Tariffs*

*Vivian C. Jones (CRS specialist in international trade and finance) “Trade Remedies: A Primer” Congressional Research Service (March 2012)*

<http://www.aais.org/wp-content/uploads/2015/02/CRS-Trade-Remedies-Primer.pdf>

On September 11, 2009, President Obama announced that he had decided to impose remedies on certain passenger and light truck vehicle tires from China, thus marking the first time that a section 421 safeguard was implemented.

**EXPLN: The first section 421 tariff was implemented in 2009. Let’s determine the impact of this tariff by examining evidence from...**

*Gary Clyde Hufbauer (Ph.D. Economics from Cambridge University, J.D. from Georgetown University, Reginald Jones Senior Fellow at Peterson Institute for International Economics) Sean Lowry (research analyst at the Peterson Institute) “US Tire Tariffs: Saving Few Jobs at High Cost” Peterson Institute for International Economics (private nonpartisan, nonprofit think tank for international economic policy) (April 2012)*

<https://piie.com/sites/default/files/publications/pb/pb12-9.pdf>

The tire tariff case, decided by the president in September 2009, exemplifies his efforts to get China to “play by the rules” and serves as a plank in his larger platform of insourcing jobs to America. However, our analysis shows that, even on very generous assumptions about the effectiveness of the tariffs, the initiative saved a maximum of 1,200 jobs. Our analysis also shows that American buyers of car and light truck tires pay a hefty price for this exercise of trade protection. According to our calculations, explained in this policy brief, the total cost to American consumers from higher prices resulting from safeguard tariffs on Chinese tires was around \$1.1 billion in 2011. The cost per job manufacturing saved (a maximum of 1,200 jobs by our calculations) was at least \$900,000 in that year. Only a very small fraction of this bloated figure reached the pockets of tire workers. Instead, most of the money landed in the coffers of tire companies, mainly abroad but also at home. The additional money that US consumers spent on tires reduced their spending on other retail goods, indirectly lowering employment in the retail industry. On balance, it seems likely that tire protectionism cost the US economy



around 2,531 jobs, when losses in the retail sector are offset against gains in tire manufacturing. Adding further to the loss column, China retaliated by imposing antidumping duties on US exports of chicken parts, costing that industry around \$1 billion in sales.

**EXPLN: The lower evidentiary standard for section 421 led to the implementation of an ineffective and harmful tariff. Not only were more jobs lost than gained, but consumers suffered due to higher prices and producers suffered due to retaliatory tariffs. To prevent section 421 from becoming an even bigger problem in the future, we propose the following plan:**

*Plan: Repeal Section 421 Tariff Authorization*

**Mandate:** Section 421 of the Trade Act of 1974 will be repealed.

**Agency & Enforcement:** Congress and the President

**Timeline:** Immediately upon an affirmative ballot

**Funding:** No funding necessary

**EXPLN: This plan will remove authorization for the President to implement China-specific tariffs at a lower evidentiary standard than for other countries. Section 201 tariff authorization, which uses a higher evidentiary standard across all countries, will remain in place.**

*Advantage 1: More Effective Tariffs*

Bruce A. Blonigen (Ph.D. Economics from UC-Davis, economics professor at University of Oregon) KaSaundra Tomlin (economics professor at Howard University) Wesley Wilson (economics professor at University of Oregon) "Tariff-Jumping FDI and Domestic Firms' Profits" National Bureau of Economic Research (July 2002)

<http://www.nber.org/papers/w9027.pdf>

On average, affirmative U.S. AD decisions are associated with 3% abnormal gains to a petitioning firm when there is no tariff-jumping FDI, but no abnormal gains if there is tariff-jumping FDI. The evidence for this mitigating effect is strongest when announcements of the intended tariff-jumping FDI have already occurred before an AD decision takes place, which happened in a fair number of cases.

**EXPLN: This evidence demonstrates that domestic companies only benefit from tariffs if the foreign firm is unable to "tariff-jump," which relocates production to avoid the tariff. As seen in the next piece of evidence, Section 421 tariffs are especially prone to tariff-jumping as they are limited to a single country...**

Phil Levy (business strategy professor at Northwestern University, Senior Fellow on the Global Economy at the Chicago Council on Global Affairs) "Did China Trade Cost the United States 2.4 Million Jobs?" Foreign Policy Magazine (May 2016)

<http://foreignpolicy.com/2016/05/08/did-china-trade-cost-the-united-states-2-4-million-jobs/>



I served on a couple of the interagency panels that reviewed these cases, though, and would offer an alternative explanation: There are more than two countries in the world. In each of the two Section 421 cases I heard, the importers made credible presentations that, were tariffs to be imposed, they would switch their sourcing from China to Vietnam, or to India, or Brazil. In one case, the factory move was estimated to take three weeks. In another, contingent contracts were already in place. Producing in those places cost a bit more than in China, which is why they weren't the original sourcing countries, but they were cheaper than the United States. So what benefit would U.S. workers have seen in blocking China trade? None. That's why we recommended against imposing tariffs.

**EXPLN: Because Section 421 tariffs are only imposed on imports from a single country, they are unable to prevent tariff-jumping, and will thus by their very nature be ineffective. Repealing Section 421 ensures that when tariffs are implemented, they will be implemented in a non-discriminatory manner, which limits their harm and maximizes their benefit.**