

May 5, 2025

Department of Commerce

Bureau of Industry and Security

1401 Constitution Ave., NW

Washington, DC 20230

Comments of the Taxpayers Protection Alliance

RE: Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Pharmaceuticals and Pharmaceutical Ingredients

Docket No. 250414-0065

On behalf of the millions of taxpayers and consumers we represent, the Taxpayers Protection Alliance (TPA) is pleased to provide input on the critical and complex relationships between pharmaceuticals, global trade, national security, and the health and welfare of the American consumer. TPA is a nonpartisan, nonprofit institution that works to educate policymakers and the public about the government's effect on the economy.

In response to the Request for Public Comments¹ issued by the Department of Commerce's Bureau of Industry and Security, Office of Strategic Industries and Economic Security, TPA makes a number of contentions: The use of tariffs under Section 232 for any purpose — including as a general negotiation tactic — other than national security is a violation of the law. There is no broad national security imperative to justify tariffs on pharmaceuticals and their components. A hyperfocus on domestic production will only shrink the supply of life-saving medicines. Finally, tariffs on American consumers and businesses are costly at best and disastrous at worst.

Section 232 Can Be Used Only for National Security Purposes

"The executive Power shall be vested in a President of the United States of America," reads Article II, Section 1, Clause 1 of the U.S. Constitution.² The executive is an empty vessel, however, until Congress — the possessor of all lawmaking powers granted by the Constitution — passes statutes to imbue the president with authority. The executive is limited by the will of the legislature, and at no time may he encroach on powers not granted. The Supreme Court has

¹ <https://www.federalregister.gov/documents/2025/04/16/2025-06587/notice-of-request-for-public-comments-on-section-232-national-security-investigation-of-imports-of#print>

² <https://constitution.congress.gov/browse/article-2/section-1/>

upheld this general principle in decisions curtailing unilateral expansions of executive authority in such cases as *West Virginia v. EPA* (2022)³ and *Loper Bright Enterprises v. Raimondo* (2024).⁴

Section 232 of the Trade Expansion Act of 1962, as amended, provides the president tariff authority in the narrow realm of national security. This delegated authority is significantly and deliberately limited by Congress. The president’s tariff power cannot be legally deployed in any other realm — not to protect specific industries, not to reshape the American economy, and not as a tool of negotiation.

Additionally, there is a strong historical basis in the Anglo-American political tradition that demands taxation powers reside in the legislative branch.⁵ Moreover, Article I, Section 8 of the Constitution makes good on this tradition, listing the first of Congress’s vested powers — which, the document says, “shall” (not “may”) be vested in that body — as the “Power To lay and collect Taxes, Duties, Imposts and Excises.”⁶

The strict construction that generally ought to be applied in these matters should be even stricter on the tariff issue. In the course of this investigation, and in making its final determination, the Department of Commerce must ensure that national security is not used as a cover to implement a general economic policy. There is a tendency throughout history to inflate the severity of a supply chain’s effects on national security for the purpose of justifying protectionism.⁷ The Constitution should not be sacrificed on the altar of petty and fleeting economic policy fights.

America Is Not Facing a General Pharmaceutical-Related National Security Crisis

A common narrative surrounding the pharmaceutical industry is that America does not make medicines anymore. This is simply not true. America produces quite a lot of pharmaceuticals, including 64 percent of finished pharmaceutical products consumed domestically — totaling \$251 billion worth of production. Meanwhile, for medicines consumed in the U.S., more than one half of active pharmaceutical ingredients (APIs) came from domestic sources. Moreover, a full quarter of U.S. pharmaceutical production is exported.

There is simply no production crisis that could conceivably weaken national security. The mere fact that American companies choose to leverage comparative advantage by utilizing imports and global trade shouldn’t raise any eyebrows. Nonetheless, the U.S. retains a robust manufacturing

³ <https://www.oyez.org/cases/2021/20-1530>

⁴ <https://www.oyez.org/cases/2023/22-451>

⁵ <https://thefederalist.com/2023/11/01/supreme-court-should-fire-the-rogue-regulators-at-the-unconstitutional-cfpb/>

⁶ <https://constitution.congress.gov/browse/article-1/section-8/>

⁷ <https://www.cato.org/policy-analysis/protectionism-or-national-security-use-abuse-section-232#trumped-security-threat>

base, which shifts national security-related inquiries to examine whether our supply chains are threatened by nations with which Americans trade.

The question is whether the remainder — the 36 percent of finished pharmaceuticals and just under half of APIs — of domestic consumption that is imported poses some kind of national security threat that requires intervention under Section 232. In the vast majority of cases, the answer is an emphatic *No*. Nearly two-thirds of imports — some 62 percent — of pharmaceutical products come from the friendly nations that comprise the European Union (EU), which pose no national security threat whatsoever. Combining the EU's share with those of the United Kingdom and Switzerland raises the total European share of U.S. pharmaceutical imports to 73 percent. The nation of primary concern, China, accounts for only 4 percent of total pharmaceutical imports. Clearly, American supply chains are not menaced by adversarial powers, but safely in the hands of friendly ones.

This naturally narrows the scope of a Section 232 investigation. Broad baseline tariffs should be eliminated from consideration. Instead, they should be replaced by very targeted inquiries into specific critical medicines currently produced in openly adversarial nations. Even here, however, policymakers should be cautious. History shows that it is very common for national security rationales to be used to justify tariffs even when no legitimate national security imperative exists — or when other geopolitical tools would suffice. Tariffs' economic benefits to protected industries are often the true reason for their imposition, no matter what high-minded rhetoric their proponents might use to justify them. Due to the economic chaos they sow (see below), national security tariffs should be a policy tool of last resort, imposed only in cases of dire and immediate national security emergency and when no other recourse is available.

Moreover, a generalized tariff of pharmaceuticals would undermine the American national interest. As noted above, the vast majority of imports come from countries with which American enjoys strong friendships. Only a small percentage come from China. Companies in multiple sectors have begun to flee Chinese markets in response to the Chinese Communist Party's heavy-handed policies. As the process occurs, any duties against products made in Singapore (8 percent of U.S. imports in 2023), for example, would create a roadblock for companies fleeing China. Broad protectionist barriers that disincentivize businesses to leave China for the markets of friendlier nations not just contravene common sense but the stated policy of the Trump administration.

The Brittleness of Domestic Supply Chains

If lacking access to certain medicines constitutes a national security threat, the U.S. should not pursue a policy that seeks to bring all pharmaceutical supply chains home. Purely domestic supply chains have proven to be both inflexible and brittle. In a global supply chain, if something goes wrong in one country, businesses can find other sources or substitutes elsewhere efficiently

and cheaply. In a purely domestic supply chain, one thing going wrong often leads straight to shortages, as trade restrictions block businesses from adapting their operations to continue supplying their product.

A prime example of this phenomenon was the shortage of baby formula of 2022.⁸ When something went wrong in that industry, decades of regulations, subsidies, and tariff and non-tariff trade barriers made the industry slow to respond to the shock. Indeed, in 2021, more than 98 percent of domestically consumed baby formula came from domestic plants. This was, in many ways, the beau ideal market of a certain strain of protectionist.

And yet, in the moment of crisis, it failed to serve the needs of the American people. The shortage was solved by moving towards international trade, not autarky. To compensate for domestic failures, America imported nearly 100 million bottles of formula through “Operation Fly Formula.”

To sum up, in the words of scholars from the Cato Institute:⁹

Perhaps the most important lesson to be gleaned from the infant formula crisis is that, contrary to conventional wisdom, substantial domestic manufacturing and market share does not ensure a secure and stable supply of essential goods and can actually increase a nation’s overall vulnerability to economic shocks and its subsequent recovery time. As numerous economic studies have demonstrated, reshoring global supply chains might insulate a nation from external supply and demand shocks but increases vulnerability to domestic shocks and inhibits adaptation when problems arise.

The Effects of Tariffs on Consumers and Industry

Tariffs are taxes, paid by Americans. They are certainly not costless. Their purported benefits — often elusive or non-existent — must be weighed against the economic damage they inflict.

Pharmaceuticals tariffs will harm consumers greatly, raising the prices of the medicines patients need to stay healthy and alive. A 25 percent tariff would balloon the cost of pharmaceuticals by \$51 billion — *per year* — and add over \$15 billion to domestic production costs. Besides making consumers poorer, this will make American businesses less competitive as their import costs rise. They would have to redirect resources from more productive uses to cover such rising costs, giving a new advantage to foreign businesses. The practical effects of tariffs are often net job losses, slowing productivity, and declining output.¹⁰

⁸ <https://www.cato.org/briefing-paper/formula-crisis#ingredients-fragile-market>

⁹ <https://www.cato.org/briefing-paper/formula-crisis#white-house-broader-executive-response>

¹⁰ <https://www.protectingtaxpayers.org/trade/trump-gets-tariffs-wrong-at-the-presidential-debate/>

Free-market economists — including no less than Adam Smith himself — have recognized that sometimes national security must trump purely economic concerns, because markets depend on stable and peaceful conditions to function properly. However, Smith also recognized that the costs tariffs impose are sizable and should not be incurred except in moments of extreme need.

Conclusion

TPA appreciates the opportunity to weigh in on this crucial issue. American healthcare is intertwined with international trade. Americans struggling with illness deserve a lawful and light-touch trade policy. Tariffs must not be used except in the most extreme cases of national emergency; certainly, those implemented under Section 232 are legally bound to national security and cannot be used as a tool of domestic economic policymaking or international negotiation. International trade makes American supply chains more resilient and lowers costs, making American producers more competitive in the process. The ultimate winner is American consumers, who gain access to the therapies they need to live happy and healthy lives.