



Recent Presidential Trade Actions Affecting the U.S. Power Grid

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Introduction

Over the past several weeks, the Trump Administration has taken actions to limit the use of foreign manufactured products in the U.S. power grid. On May 1, 2020, the President [declared a national emergency](#) (E.O. 13920) invoking the [International Emergency Economic Powers Act \(IEEPA\)](#) to prohibit certain international transactions for bulk-power system electric equipment used to operate the national grid. On May 4, Secretary of Commerce Wilbur Ross, [announced a new investigation](#) under [Section 232 of the Trade Expansion Act of 1962](#) into whether imports of certain large electrical transformers and their parts threaten national security. These actions may suggest a pattern, [begun last year](#), of making use of executive national security authorities to restrict imports of goods that may be used for critical infrastructure (e.g., telecommunications and electrical equipment).

The U.S. Power Grid and National Security Issues

The federal government recognizes the U.S. bulk-power system as critical infrastructure, whose “[disruption, corruption, or dysfunction](#)” would have severe impacts across critical infrastructure sectors. The Department of Energy (DOE) administers voluntary public-private partnerships in the [electricity subsector](#) to promote information sharing on best practices and common threats affecting bulk-power systems. These systems enable long-distance transmission and distribution of electricity from generation facilities to end users. In addition, the Federal Energy Regulatory Commission (FERC), an independent federal agency, oversees mandatory and enforceable reliability standards for industry stakeholders.

Risk assessments by subsector stakeholders have generally focused on threats and hazards that may disable or permanently damage large numbers of high-voltage electric-power transformers (LPTs) simultaneously. LPTs are critical to the movement of electricity across the bulk-power system. Because LPTs require long lead times for manufacture, transport, and installation, loss of these systems for any reason may have severe long-term consequences for electric reliability. Experts have expressed increasing concern about [the threat of coordinated cyberattacks](#) through the nation’s networked control systems that might significantly impair the nation’s electric grid by damaging LPTs and other bulk-power equipment.

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Widely recognized [cyber supply chain vulnerabilities](#) may increase cybersecurity risks to the electricity subsector.

In 2016, FERC initiated development of a new reliability standard to address supply chain risk management issues affecting cybersecurity of bulk-power systems. The [rule](#) would require industry stakeholders to formalize cybersecurity risk management and implement more rigorous vetting of vendors and software, among other measures. In April 2020, [FERC delayed implementation](#) of the rule due to COVID-19 contingencies. Policies developed under the recent emergency declaration or because of an affirmative Section 232 investigation (see below) might block procurement of bulk-power systems from certain foreign-owned vendors and subcontractors on national security grounds, [rather than allowing industry stakeholders](#) to purchase these systems and then assume corporate responsibility for carrying out risk mitigation measures mandated by applicable FERC reliability standards.

International Emergency Economic Powers Act Action

On May 1, 2020, President Trump [declared a national emergency](#), finding that “foreign adversaries are increasingly creating and exploiting vulnerabilities in the United States bulk-power system.” The finding determined that “the unrestricted foreign supply of bulk-power system electric equipment constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.”

In declaring the emergency, President Trump invoked IEEPA, which provides the President broad authority to regulate international economic transactions during a declared national emergency. While the statute has been most commonly used as part of U.S. sanctions measures, the Trump Administration has used it in new ways, including in actions to protect national infrastructure, like [telecommunications](#). In this case, the President banned “any acquisition, importation, transfer, or installation of any bulk-power system electric equipment ... by any person, or with respect to any property, subject to the jurisdiction of the United States” when (1) that transaction involves property in which a foreign country or a foreign national has an interest and (2) the Secretary of Energy, in consultation with other interested officials, finds that such a transaction would impair national security. He also ordered the establishment of a Task Force on Federal Energy Infrastructure Procurement Policies Related to National Security to recommend policies and assess their effectiveness.

Section 232 Investigation

On May 4, 2020, Commerce Secretary Ross [announced](#) the self-initiation of an investigation under [Section 232](#) into whether imports of certain electrical transformers or their parts, including laminations and cores made of grain-oriented electrical steel (GOES), threaten to impair national security. GOES products are incorporated into transformers used in critical energy infrastructure. Commerce has 270 days to conduct the investigation in consultation with the Secretary of Defense and other U.S. officials, and submit a report to the President advising whether the imports of GOES derivatives threaten to impair national security and provide recommendations. This marks the Trump Administration’s sixth Section 232 investigation.

After a 2018 investigation, President Trump [applied 25% tariffs on imports of certain steel products](#) and, in January 2020, [expanded the tariffs](#) to cover certain derivative steel products. While some Members of Congress raised various concerns at the time about the increased tariffs, other Members have since argued that the tariffs were insufficient because they [did not cover GOES derivative products](#) like laminations and cores. They also argue that some firms had [avoided tariffs](#) by increasing imports of such derivative products from Mexico and Canada, which do not presently face tariff restrictions. AK Steel, with manufacturing operations in Pennsylvania and Ohio, is currently the sole domestic GOES producer.

Potential Impact of Actions and Issues for Congress

Article I, Section 8 of the U.S. Constitution grants to Congress the power to regulate commerce with foreign nations. As one scholar has [argued](#), over the 20th century, Congress has delegated different levels of authority to the President. Congress has generally tightly controlled trade-liberalizing measures, like Trade Promotion Authority but it has also more fully delegated trade-restricting measures related to time-sensitive and national security matters through mechanisms like IEEPA and Section 232. Over the past several years, the Trump Administration has increasingly made use of trade-restricting national security measures to pursue various long-term trade-related strategies.

Previously, such actions have sparked [concern](#) among some Members, leading to debate over whether such actions reflect Congress's purpose in delegating national security authorities over trade. The question is particularly acute for time-sensitive situations when some argue that the legislative branch may be, as John Locke described it, "[too numerous, and so too slow, for the dispatch requisite to execution.](#)"

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