

A new threat to U.S. national security: the imminent demise of Hollywood

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The president of the United States announced, in a Sunday afternoon social media post, his intent to declare incentives by its trading partners to their film industries a “national security threat” to the United States.

In his social media posts, the president authorized the Department of the Commerce and the United States Trade Representative to institute a 100% tariff on “any and all Movies coming into our Country that are produced in Foreign Lands.” The White House has since indicated that no definitive decision has been made on the topic, but that “the Administration is exploring all options to deliver on President Trump’s directive to **safeguard our country’s national and economic security while Making Hollywood Great Again.**”

In response to this move, former Alberta premier Jason Kenney noted the support provided to the Canadian film industry and exhorted the Prime Minister to protect the industry against this new threat. *Critics* of film subsidies underlined, however, the vast resources that governments at all levels pour into the sector and argued that policy makers should take this opportunity to remove what they – the critics – considered wasteful and distorting support for the Canadian film industry.

I write neither to praise film industry support nor to bury it. Nor do I wish to comment more than I already have, here and elsewhere, on the challenges — institutional, economic, substantive — presented by trade policy being made, and massive taxes imposed on U.S. taxpayers, by one political leader and his advisers (bad enough already) on the basis of “national security.” (The German words *verrückt* and *wahnsinn* come to mind, but that’s by the by.)

This brief post will try to demystify the issue — in the hope of informing, rather than inflaming, what is likely to be yet another difficult debate internally and exercise in trade diplomacy externally. It will conclude with a word of gentle warning to my former student and colleague, Jamieson Greer, the United States Trade Representative.

President Trump as a Rorschach test for policy nerds

No sooner had the proverbial ink dried on President Trump's social media post than pundits and savants took to the airwaves talking about the waste and distortions of film industry support in Canada.

This was exactly what happened back in November, and again in January, and again in February, with border security, defence spending, supply management, banking regulation, and so on. President Trump's statements serve as a unique Rorschach test for the pet peeves and grievances of Canadian commentators. If only we remove these programs, all will be well. As we have seen repeatedly, President Trump also has a unique capacity to undermine anyone who steps forward in substantive defence of his positions: the "fentanyl" tariffs were transformed into complaints against supply management, and as soon as Canadian commentators gravely intoned against the distorting effects of the program and announced that if only after border security we dealt with supply management, the tariffs would go away, the president stepped in to complain about foreign banks, and so on. And on.

And so, once more into the breach:

Whatever the merits or challenges of any given Canadian policy, the policy itself has nothing to do with U.S. measures; changing the policy will have no impact on the uncertainties of one man proudly imposing hundreds of billions in taxes on his own taxpayers; we have "deals" and trade agreements governing every aspect of whatever grievance the United States has; the announced measures are illegal under international trade law; the pretext — "national security" — is without basis.

If there are issues with this or that policy in Canada, the driver of change should be debate in Canada under the law, rather than driven by social media posts by U.S. officials.

Canada's film industry support and its discontents

From a trade perspective, Canada's film industry support has been the subject of controversy and challenge for decades. Barely three years into the life of the WTO, the [European Union challenged](#) Canada's film distribution rules. (The matter never went to a dispute.)

In 2001, the U.S. Screen Actors Guild brought a "[countervail](#)" petition against Canadian audiovisual products, "to stem the flows of so-called 'runaway' productions from the U.S. to Canada." This was one of the files that landed on my desk when I arrived back in Ottawa as deputy director and head of the newly created Market Access and Trade Remedy unit of the Trade Law Bureau of Canada's Department of Foreign Affairs and International Trade (as it then was); my first official visit to the United States after assuming that role was to discuss the petition and the U.S. government reaction to it. The matter did not go further. In 2007, the Film and Television Action Committee (FTAC) (the entity no longer exists) filed a "301" petition calling for action against Canadian film subsidies. The petition did not result in any measures.

For all that, and although Hollywood has an entire industry periodically writing its obituary and demanding "[international trade remedies](#)," nothing happened. Why? Well, it's complicated.

“What’s in a name?”

Film. Movie. Motion picture.

We all think we know what we are talking about (the thing you see on the screens in a theatre, at home on TV, or on your mobile phone doing steps), but in trade terms, it’s not all that clear. Let me explain.

In the Before Times, “film” was a physical thing. First, there were the reels made from negatives. Then came videos that were made from scanning the reels. Film was eventually digitized, but also recorded on physical media in digital format such as LaserDiscs and DVDs and Blu-rays.

There are international rules governing subsidies for the production of goods (but not for services — long story, that). Easy enough when you’re talking about furniture. But a movie? There is a physical good (negatives, reels), but is the subsidy given to the production of a movie (essentially a complex web of services) the same as a subsidy given to the production of the physical good? Clearly not. When negatives or a reel cross the border, their “value for customs” is not the total production cost of the movie that is imprinted on them. The same for home entertainment products: the “value for customs” of a DVD is not the production cost of the movie divided by how many DVDs were recorded; it’s the cost of the DVD itself.

This presents a challenge for “trade remedies.” Countervailing duties apply to injurious subsidies based on the value of the good crossing the border — the physical reels or DVDs — and not on the services component, in respect of film, of the underlying production.

The picture is even more complicated when talking about electronic media. Streaming is clearly a service; what is the good that is being traded on which tariffs would be imposed? Or is it that every viewing is subject to a 100 per cent tariff? What is the value assessed for each viewing? If you buy or rent a film, there is a value (presumably, “value for customs” when the good is bought; some sort of services valuation when the film is rented — again, a service, not a good); but what if a film is part of the general streaming services offered by a network? How do you assess the tariffable value?

When things go loop-to-loop

Here’s where things get really interesting. I mean, now that we’re into indiscriminate “tariff” imposition, what difference does it make if something is a good or a service? You impose 100 per cent “taxes” on the foreign “good” or “service” — and the immediate impact, on the whole, is an end to the importation of the good or service.

So there.

Hollywood saved!

Except that ... cultural goods and their intellectual property are one of the biggest exports of the United States. Don’t take my word for it. Here is the [U.S. Department of State](#):

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The Office of Intellectual Property Enforcement (IPE) advocates for the effective protection and enforcement of intellectual property rights (IPR) around the world. The IPE team works closely with U.S. ambassadors and diplomats serving worldwide to ensure that the interests of American rights holders are represented overseas, and to highlight the integral role that IPR protection plays in supporting global innovation and economic growth.

Here is the gentle warning, though it should be obvious.

Hollywood is already great. Film-making in Canadian cities like Toronto and Vancouver – and it’s somewhat perplexing that this needs to be said – is not a national security threat to the United States. More to the point, so far, the tariff/retaliation tit-for-tat framework has been confined to goods; the countries at the receiving end of U.S. tariffs have shown remarkable restraint in not attacking U.S. services and IP exports. The proposed U.S. measures on film don’t just open the door to services and IP measures — they practically demand all-out economic warfare on the most valuable, and the most vulnerable, U.S. exports. It will be interesting to see [how many Scaramuccis](#) the newly announced measures will last; even so, the global reverberation of the breach of the services/IP dam could be significant.

By

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