

Drinker Biddle

What Do the Section 232
National Security Investigations
Mean for You?

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Trump's Trade Policy Agenda

- Introduced March of this year, but light on specifics.
- Main theme is “more aggressive approach” to trade.
- Trade actions will be designed to:
 - Increase economic growth;
 - Promote job creation;
 - Promote reciprocity with trading partners;
 - Strengthen the manufacturing base;
 - Strengthen ability to defend ourselves;
 - Expand our agricultural and services industry exports

Trump's Trade Policy Agenda (continued)

- Four major priorities:
- (1) **Defend U.S. national sovereignty** over trade policy;
- (2) **Strictly enforce U.S. trade laws**;
- (3) Use all possible sources of leverage to encourage other countries to **open their markets to U.S. exports** of goods and services, and provide adequate and effective **protection and enforcement of U.S. intellectual property rights**; and
- (4) Negotiate **new and better trade deals** with countries in key markets around the world.

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862)

- Authorizes the Secretary of Commerce to investigate to determine “the effects on the national security of imports” of any article
- If the Secretary of Commerce finds that “such article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security,” then the Secretary will so advise the President
- If the President concurs, President then will “determine the nature and duration of the action” that must be taken “to adjust the imports of the article and its derivatives”
- President can take other lawful non-trade actions necessary to address any threat

Section 232 Factors to Consider

- Domestic production needed for projected national defense requirements
- Domestic industry's capacity to meet those requirements
- Existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense
- Requirements of growth of such industries and such supplies and services, including the investment, exploration, and development necessary to assure such growth
- Importation of goods in terms of their quantities, availabilities, character, and use of those affect such industries and the capacity of the United States to meet national security requirements

Section 232 Factors to Consider (continued)

- The close relation of national economic welfare to U.S. national security
- Impact of foreign competition on the economic welfare of individual domestic industries
- Any substantial unemployment, decrease in revenues of government, loss of skills or investment, or other serious effects resulting from the displacement of any domestic products by excessive imports

Section 232 Procedure

- Can be initiated by petition by an interested party, or self-initiated
- Upon initiation of an investigation, Secretary of Commerce must immediately notify Secretary of Defense, and consult regarding methodological and policy questions raised in investigation
- Secretary of Commerce may seek information and advice from, and consult with, other agencies
- Secretary of Commerce may hold public hearing, if appropriate
- Secretary of Commerce's report due to the President within 270 days after initiation
- After receiving report, President has 90 days to make determination
- Implementation within 15 days after President's determination
- President must submit report to Congress within 30 days after determination

Past Use of Section 232

- Administering authority has changed over time: from Director of Office of Emergency Planning/Preparedness (1962-1973), to Department of Treasury (1973-1980), to Department of Commerce (1980-present).
- From 1963 through 1973, several petitions were filed on various products, but in each case, the administering authority determined that imports did not threaten to impair national security.
- In 1973, 1975, and 1979, administering authority determined that imports of oil threatened to impair national security. President imposed various types of import restraints on oil generally.

Past Use of Section 232 (continued)

- In 1979, administering authority determined that oil imports from Iran posed a threat to national security. President terminated all oil imports from Iran.
- In 1982, administering authority extended 1979 finding on oil imports generally. President embargoed crude oil produced in Libya.
- In 1983, petition was filed on metal-cutting and metal-forming machine tools. President deferred formal Section 232 decision, but negotiated voluntary restraint agreements with Japan and Taiwan.

Past Use of Section 232 (continued)

- Various other products have been investigated: Plastic Injection Molding Machinery (1988); Uranium (1989), Gears and Gearing Products (1991-92); Integrated Circuit Ceramic Packages (1993); but in each case, Commerce concluded that imports do not threaten national security.
- Additional investigations of Petroleum (1988, 1994-95 and 1999-2000): in each case, President found that imports threaten national security, but determined no action was necessary to adjust imports.
- Investigation of Iron Ore and Semi-Finished Steel (2001): President determined that no action is necessary to adjust imports.

Use of Section 232 Under Trump Administration

- Idea pushed by Secretary of Commerce Wilbur Ross
- Rationale is that antidumping/subsidy cases are too narrow in product scope and country-specific, which leads to “whack-a-mole” problem of slight modification of products and/or transshipment and production shifting.
- Additional problem is that a broader trade statute (Section 201 “safeguards” investigation) has been used in the past for steel generally (in 2001), but was struck down by World Trade Organization (WTO). WTO has consistently applied strict interpretation of situations in which safeguard remedies can be used.

Pending Section 232 Investigation of Steel

- Self-initiated by Commerce on April 19, 2017, in response to request from President Trump
- Public hearing held on May 24, 2017
- Original plan was for Commerce to expedite investigation and send determination to President by end of June 2017
- Rumored dissent within the Administration regarding strategy, especially from Departments of Defense and Treasury
- Plans then delayed until after G-20 meeting in early July 2017
- Reportedly, determination is continuing to be delayed as means of pressuring Chinese to agree to serious reductions in steel production and capacity in OECD Steel Committee talks. OECD recommendations due in November 2017

Section 232 Steel Issues

- U.S. mills concede that only a small percentage of U.S. steel production is used for defense applications. But they argue that the U.S. industry must continue to be viable for commercial production in order to keep a U.S. industry available to make specialized defense applications.
- U.S. mills make broader argument that a healthy U.S. steel industry is critical to the U.S. industrial base generally, and thus is a national security issue.
- Critics worry that U.S. downstream industries will suffer against import competition if they cannot obtain basic steel mill products at world market prices
- Concern about retaliation from U.S. trading partners
- Concern that other countries will look to “national security” loophole to justify protectionism for their own industries

Section 232 Steel – Comments on Specific Products

- If the President imposes import restraints in this investigation, clearly the broad range of basic steel mill flat products would be included: hot-rolled, cold-rolled, corrosion-resistant, and plate.
- Several witnesses argued for import restraints on pipe and tube products, especially oil country tubular goods and line pipe.
- Various witnesses argued in favor of import relief on a variety of other steel products, including electrical steel, rebar, special-bar-quality steel, cold finished bar, stainless and specialty steels, fabricated structural steel, and steel castings.

Section 232 Steel – Comments on Specific Products (continued)

- Some mills argued that the scope should be expanded beyond basic steel mill products (i.e., HTS chapter 72) and articles of iron and steel (i.e., HTS chapter 73). They argued that downstream industries should be covered, such as steel transformers and cores (purchasers of electrical steel), and downstream automotive components made from cold finished bars. Fabricated steel producers argued that manufactured structures should be included in relief. The proponents of expanding the scope to include downstream products is that without a broader scope, the customers of U.S. steel producers will be driven out of business or forced offshore.
- Some general comments asking for mechanism to grant exclusions for products that are not produced in the United States.
- Some U.S. mills, such as Nucor, argued strenuously against exemptions for semi-finished products, such as steel slabs, because that would discourage primary steelmaking in the United States.

Section 232 Steel – Comments on Specific Products (continued)

- Several witnesses argued for specific exclusions:
 - Some steel mills that make finished steel products, but do not melt and pour steel, argued against restraints on their ability to source imported substrate. Examples: Steelscape, which purchases hot-rolled steel and transforms it in the United States to corrosion-resistant steel; California Steel, which purchases slabs for rolling.
 - Various downstream transplant producers argued for exemptions so they can continue to source some inputs from producers in their home countries: Nippon Steel and Sumikin Cold Heading Wire Indiana (wants exclusion of steel wire rod from Japan); Hyundai Steel America (wants exclusion of cold-rolled and corrosion-resistant steel from Korea and Japan).
 - Other U.S. downstream producers that rely on imports argued for exclusions: Can Manufacturers Institute (wants exclusion for tin mill products); U.S. Tire Manufacturers Association (wants exclusion for tire cord quality steel wire rod, tire cord, and bead wire); Air Distribution Institute (wants exclusion for light-gauge galvanized steel); Ohio Coatings Company (U.S. tinplate producer that wants exclusion for tin mill blackplate); Autoliv, ASP (wants exclusion for ultra high strength mechanical tubing for use in airbags),

Section 232 Steel – Countries Covered

- Clearly, China is the single biggest target.
- Several witnesses also pointed to Korea and Turkey as problems, because capacity is much larger than domestic consumption needs, and because producers of finished steel products in those countries have relied on unusually-low-priced Chinese imports of primary inputs, such as billets (for long steel producers) or hot-rolled coil (for downstream flat products).
- Significant support for an exclusion for Canada, even from the United Steelworkers union.
- Australian government claims that the United States will give it an exemption.
- Some reports that there may be a NAFTA exclusion that includes Mexico, in addition to Canada.

Section 232 Steel – What to Look For

- Tariff, quota, or tariff-rate quota?
- If quota or tariff-rate quota, what will be the formula for allocating quotas?
- Product scope—basic steel mill products, or broader downstream products?
- Any country exemptions (for example, NAFTA)?
- Any exemptions or “short supply” mechanism for products not made in U.S. or made in only small quantities?
- Duration of import restrictions?
- Possible WTO challenges. Article 21 of the GATT states that each member is entitled to determine what it considers to be its own “essential security interests” and take actions it considers necessary to protect those interests.

Pending Section 232 Investigation of Aluminum

- Self-initiated by Commerce on April 27, 2017 in response to request from President Trump
- Public hearing held on June 22, 2017
- Original plan was to expedite investigation
- Investigation has been stalled since then
- DOC proceeding with AD/CVD investigations of aluminum foil from China

Section 232 Aluminum Issues

- Emphasis of Aluminum Association is addressing excess capacity of China
- Aluminum Association wants to avoid actions against Canada and the EU, because of integrated supply chains
- Argument that military needs high-purity aluminum for systems like the F-35 Joint Strike Fighter; only one U.S. mill capable of producing high-purity aluminum
- General arguments made that aluminum is important to “critical infrastructure,” especially energy sector (e.g., electric grid, solar photovoltaics)
- Beverage and can manufacturers oppose restrictions on primary aluminum used in can sheet products, because products are not “widely available” in the U.S. and must be sourced from foreign countries
- Aluminum Association opposes product carve-outs
- Aluminum Extrusion Counsel opposes import restraints on primary aluminum. They say China does not export primary aluminum, and import restraints would effectively support China’s subsidization of their semi-fabricated aluminum producers.

Section 232 Aluminum – Comments on Specific Products

- Many witnesses at the hearing advocated coverage of primary, secondary, and fabricated (i.e., downstream) aluminum products.
- Economic Policy Institute advocated covering all products in HTS Chapter 76
- Argument that while China does not export primary aluminum, it is the low-cost primary aluminum that allows Chinese producers of secondary and fabricated products to disrupt world markets, by selling, for example, semi-manufactured aluminum products in the North American market at prices below the North American price for basic aluminum products.
- Several witnesses urged coverage of downstream industries, because otherwise, importers would shift from importing primary aluminum to importing downstream products.
- Packaging industry urged exclusion for aluminum foil for flexible packaging.
- Can Manufacturers Instituted urged exclusions for aluminum cansheet, aluminum slugs, and aluminum ingots.

Section 232 Aluminum – Countries Covered

- Central focus is China
- Widespread support for excluding Canada from restrictions
- Significant support for excluding Europe (e.g, Alcoa, Aluminum Association)

Administration Policy in Light of Recent WH Changes

■ Impact of Steve Bannon

- Steve Bannon left the White House staff last Friday (Aug. 18).
- He was a big proponent of economic nationalism.
- Section 232 investigation was part of that agenda.
- With his departure, does this mean that any recommendations will be moderated?
- Will Secretary Ross be able to carry the economic nationalism banner or will others in the White House hold more sway over President Trump?
- Stay tuned.

Other Possible Section 232 Targets

- Semiconductors
- Shipbuilding

Thank You.

Douglas Heffner

Richard Ferrin

Drinker Biddle & Reath

(202) 230-5802

Douglas.Heffner@dbr.com

(202) 230-5803

Richard.Ferrin@dbr.com

