Commerce Finds That Steel and Aluminum Imports Threaten National Security – Recommends a Variety of Tariffs and Quotas on a Broad Range of Products

By Nate Bolin and Douglas J. Heffner

U.S. Commerce Secretary Wilbur Ross has issued two long-awaited reports finding that imports of steel and aluminum threaten the national security of the United States. Based on these findings, Secretary Ross has recommended to the President that he impose tariffs and quotas on a broad range of steel and aluminum imports. Although President Trump is free to make his own findings and impose his own relief, if Secretary Ross’ recommendations are adopted, it will likely have a significant impact on the prices and availability of steel and aluminum, both imported and domestic.

President Trump must issue his decision on the reports by mid-April. If he accepts the recommendations of the two reports, it would signal the opening of a new front in U.S. trade relations that will have significant implications for a host of industries outside the aluminum and steel sectors. Companies that have been adversely impacted by surging imports, those who rely on exports to countries targeted by the reports, and companies that are heavily reliant on imported materials should all closely monitor these developments and consider how these and similar future actions could impact their own bottom lines.

Background

Last year, President Trump requested that the Secretary of Commerce undertake investigations into whether imports of steel and aluminum threatened national security. President Trump invoked this rarely used mechanism under Section 232 of the Trade Expansion Act of 1962.

Although the Section 232 investigations of steel and aluminum were initiated at the request of the president, a mechanism also exists for companies to submit their own requests to the Commerce Department. Pursuant to this mechanism, at least one other Section 232 investigation, on imports of uranium, was recently requested. If the president adopts the recommendations of the Commerce Secretary in the steel and aluminum cases, it would not be surprising to see more such requests filed in the coming months. In fact, the Commerce Department wants to create teams within the Bureau of Industry and Security and the International Trade Administration dedicated to conducting Section 232 investigations. The Commerce Department recently requested additional funding for 28 new positions to handle anticipated new Section 232 investigations that are requested by industry sectors, the heads of agencies, and self-initiated investigations by the secretary.

At the time he requested the steel and aluminum investigations, the president promised decisive action to help both industries. Nevertheless, he faced significant opposition from his own cabinet, from Congress, and from the business community. Partly due to this opposition, the new year came and went without the Secretary of Commerce issuing the report for either steel or aluminum.

However, on January 12, 2018, Secretary Ross delivered reports to the president for both steel and aluminum. Although the reports were submitted to the president, they were not released to the public.

On February 16, 2018, the Commerce Department released both reports to the public. Note that these are only the recommendations of the Commerce Department.

President Trump must release his decision in the Section 232 proceeding on steel by April 11, 2018, which is 90 days after the Commerce Department sent the report and recommendations to him. The decision in the aluminum Section 232 proceeding must be issued by April 19, 2018. If President Trump were to agree that imports of steel and aluminum threaten the national security of the United States, any remedies imposed would become effective 15 days after he issues his decision.

Below are descriptions concerning the findings and recommendations for both the steel and the aluminum investigations. For the details concerning the steel investigation, click here.

Steel Report

National Security Finding

In conducting the investigation, the secretary found the following:

- “National security” as used in Section 232 is a broad term that includes projected national defense requirements for the U.S. Department of Defense, as well as U.S. critical infrastructure sectors including transportation systems, the electric power grid, water systems, and energy generation systems.

- Domestic steel production is essential for national security applications. Statutory provisions
illustrate that Congress believes domestic production capability is essential for defense requirements and critical infrastructure needs, and ultimately to the national security of the United States. U.S. government actions on steel across earlier administrations further demonstrate that domestic steel production is vital to national security.

- **Domestic steel production** depends on a healthy and competitive U.S. industry, which was defined to include five categories of steel products: flat, long, semi-finished, pipe and tube, and stainless. The principal types of mills that produce steel are integrated mills with basic oxygen furnaces (BOFs); mini-mills using electric arc furnaces (EAFs); re-roller/converter; and metal coating facilities. BOFs convert raw materials into steel, and remain critical for continued innovation in steel technology.

- **Commerce** found that demand for steel in critical industries has increased since the Department’s last investigation in 2001. The 2001 report determined that there were 33.68 million tons of finished steel consumed in critical industries per year in the United States. Using 2007 data (the latest available), Commerce determined that domestic consumption in critical industries has increased significantly, with 54 million metric tons of steel now being consumed annually in critical industries.

### Remedy Recommendations

The secretary recommended that the president impose a quota or tariff on all covered steel products imported into the United States to remove the threatened impairment to national security. The following are his recommendations:

- **Global Quota**: The United States should impose quotas on all imported steel products at a specified percent of the 2017 import level, applied on a country and steel product basis. A 63 percent quota would be expected to reduce steel imports by about 37 percent (13.3 million metric tons) from 2017 levels. Based on imports from January to October 2017, import levels for 2017 were expected to reach 36.0 million metric tons. As a result, the recommended quota would restrict steel imports to approximately 22.7 million metric tons. In turn, Commerce forecasts that the quota will enable the domestic steel industry to attain an 80 percent capacity utilization rate at 2017 demand levels.

- **Global Tariff**: Alternatively, the United States should apply a tariff on all imported steel products on top of any antidumping or countervailing duties. Commerce forecast that a 24 percent tariff on all steel imports would be expected to reduce imports by 37 percent (i.e., a reduction of 13.3 million metric tons from 2017 levels of 36.0 million metric tons). As a result, the tariff would be expected to reduce imports to about 22.7 million metric tons, again enabling the domestic steel industry to achieve an 80 percent capacity utilization rate.

- **Country-Specific Tariffs**: As a third alternative, the United States should apply a tariff rate on all imported steel products from Brazil, South Korea, Russia, Turkey, India, Vietnam, China, Thailand, South Africa, Egypt, Malaysia and Costa Rica. Again, these tariffs would be in addition to any antidumping or countervailing duties on steel imports from those countries. Commerce predicted that a 53 percent tariff on all steel imports from this subset of countries would be expected to reduce imports by 13.3 million metric tons from 2017 import levels from the targeted countries. All other countries would be limited to 100 percent of their 2017 import levels. Commerce expects that these measures would increase domestic producers’ capacity utilization rate to 80 percent based on 2017 demand levels.

### Product Scope

When the secretary initiated the investigation, he did not specify the products that were covered by the scope of the investigation. As a result, the Commerce report is the first time that the intended scope has been defined publicly. According to the report, the product scope covers steel mill products (“steel”) that are defined at the Harmonized System (HS) six-digit level as: 720610 through 721650, 721699 through 730110, 730240 through 730290, and 730410 through 730690, including any subsequent revisions to these HS codes. The following discontinued HS codes have also been included for purposes of reporting historical data prior to 2007: 722520, 722693, 722694, 722910, 730410, 730421, 730610, 730620 and 730660.

Commerce found that these steel products are all produced by U.S. steel companies and support various applications across the defense, critical infrastructure, and commercial sectors. Generally, these products fall into one of the following five product categories (including but not limited to):

1. **Carbon and Alloy Flat Products (Flat Products)**: Produced by rolling semi-finished steel through varying sets of rolls. Includes sheets, strips and plates.

   Flat products are covered under the following 6-digit HS codes: 720810, 720825, 720826, 720827, 720836, 720837, 720838, 720839, 720840, 720851, 720852, 720853, 720854, 720890, 720915, 720916, 720917, 720918, 720925, 720926, 720927, 720928, 720990, 721011, 721012, 721020, 721030, 721041, 721049, 721050, 721061, 721069, 721070, 721090, 721113, 721114, 721119, 721123, 721129, 721190, 721210, 721220, 721230, 721240, 721250, 721260, 722511, 722519, 722530, 722540, 722550, 722591, 722592, 722599, 722611, 722619, 722691, 722692, 722693, 722694 and 722699.

2. **Carbon and Alloy Long Products (Long Products)**: Steel products that fall outside the flat products category. Includes bars, rails, rods and beams.

   Long products are covered under the following 6-digit HS codes: 721310, 721320, 721391, 721399, 721410, 721420, 721430, 721491, 721499, 721510, 721550,721590, 721610, 721621, 721622, 721631, 721632, 721633, 721640, 721650,
Aluminum is essential to U.S. national security. The U.S. government does not maintain any global quota:

- Global Quota:
- Global Tariff:

The present quantity of imports adversely impacts there is significant unused production capacity. Global excess aluminum capacity is a circumstance that contributes to the weakening of the U.S. aluminum industry and the U.S. economy.

There is significant unused production capacity among U.S. aluminum producers.

**Remedy Recommendations**

The secretary has recommended three alternatives to curb aluminum imports:

- **Global Quota:** The United States should impose an import quota of 86.7 percent of 2017 imports for all countries. This would mean that the U.S. would limit the sum of all subject aluminum imports, regardless of origin, to 86.7 percent of their 2017 level. This forced reduction in imports is intended to provide room for U.S. aluminum producers to increase output equal to the 13.3 percent import shortfall. As 5,046,000 metric tons of primary (unwrought) aluminum were imported in 2017, this quota would result in a maximum import volume of 4,374,882 metric tons per year.

- **Global Tariff:** A tariff of 7.7 percent on all subject aluminum imports from all countries. According to Commerce, the tariff will have an equivalent effect to the global import quota discussed above.

**Country Exemptions**

Commerce advised that in adopting the recommended policy options, the president could exempt certain countries based on an overriding economic or security interest of the United States. The secretary recommended that any such exemption should be made at the outset. Moreover, a corresponding adjustment should be made to the final quota or tariff imposed on the remaining countries. This would ensure that overall imports of steel to the United States remain at or below the level needed to enable the domestic steel industry to operate as a whole at an 80 percent or greater capacity utilization rate.

Any exemptions should be limited to 100 percent of each exempted country’s 2017 import level in order to prevent the exempt country from producing additional steel for export to the United States or encouraging other countries to seek to trans-ship steel to the United States through the exempted countries. Each Product Exclusion: The recommendations also provide for an appeal process by which affected U.S. parties could seek a product-based exclusion from the tariff or quota imposed. The secretary would grant exclusions based on: (1) a demonstrated lack of sufficient U.S. production capacity of comparable products or (2) specific national security-based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the secretary. An exclusion may be granted for a period to be determined by the secretary and may be terminated if the conditions that gave rise to the exclusion change. The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted, the secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to ensure that U.S. steel production meets target levels.

**Aluminum Report**

**National Security Report**

In conducting the investigation, the secretary found the following:

- Aluminum is essential to U.S. national security. Aluminum is important for defense, electricity production and distribution, transportation, construction, manufacturing, and various forms of public infrastructure.

- The U.S. government does not maintain any strategic stockpile of bauxite, alumina, aluminum ingots, billets or any semi-finished aluminum products such aluminum plate.

- The present quantity of imports adversely impacts the economic welfare of the U.S. aluminum industry.

- Global excess aluminum capacity is a circumstance that contributes to the weakening of the U.S. aluminum industry and the U.S. economy.

- There is significant unused production capacity among U.S. aluminum producers.
Tariffs on a Subset of Countries: A tariff of 23.6 percent targeted only toward imports of aluminum from China, Hong Kong, Russia, Venezuela and Vietnam. According to Commerce, these countries were selected for having significant production overcapacity, engaging in transshipment from China to evade AD/CVD orders, and being unreliable suppliers. This tariff is expected to have an equivalent effect to the global tariff and the global quota proposals, above.

Product Scope

The intended product scope includes the following categories:

<table>
<thead>
<tr>
<th>HTS Subheading</th>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>7601</td>
<td>Primary (unwrought) aluminum</td>
</tr>
<tr>
<td>7604</td>
<td>Aluminum bars, rods and profiles</td>
</tr>
<tr>
<td>7605</td>
<td>Aluminum wire</td>
</tr>
<tr>
<td>7606</td>
<td>Aluminum plates, sheets and strip, of a thickness exceeding 0.2 mm</td>
</tr>
<tr>
<td>7607</td>
<td>Aluminum foil (whether or not printed, or backed with paper, paperboard, plastics or similar backing materials) of a thickness (excluding any backing) not exceeding 0.2 mm</td>
</tr>
<tr>
<td>7608</td>
<td>Aluminum tubes and pipes</td>
</tr>
<tr>
<td>7609</td>
<td>Aluminum tube and pipe fittings</td>
</tr>
<tr>
<td>7616.99.5160</td>
<td>Other articles of aluminum: castings</td>
</tr>
<tr>
<td>7616.99.5170</td>
<td>Other articles of aluminum: forgings</td>
</tr>
</tbody>
</table>

For HTS 7606, the scope includes can sheet for aluminum can packaging.

Country Exemptions

The secretary’s recommendations provide for the president to grant exemptions to specific countries by allowing them an import quota of 100 percent of 2017 imports or removing the quota altogether. If such exemptions are made, the secretary recommends that the tariff rate or quota amount on the remaining countries be adjusted to compensate and achieve the goal of reducing imports to the levels set forth in each of the three remedy alternatives discussed above.

Product Exclusions

The secretary recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed. The secretary would grant exclusions based on: (1) a demonstrated lack of sufficient U.S. production capacity of comparable products or (2) specific national security-based considerations. This appeal process would include a public comment period on each exclusion request, and in general, would be completed within 90 days of a completed application being filed with the secretary.

An exclusion may be granted for a period to be determined by the secretary and may be terminated if the conditions that gave rise to the exclusion change. The U.S. Department of Commerce will lead the appeal process in coordination with the Department of Defense and other agencies as appropriate. Should exclusions be granted, the secretary would consider at the time whether the quota or tariff for the remaining products needs to be adjusted to ensure that U.S. aluminum production meets target levels.

Conclusion

The U.S. Commerce Department’s release of its Section 232 findings on steel and aluminum signals the start of an important new stage in the Trump administration’s ongoing realignment of U.S. trade and national security policy. If the president adopts the Commerce Department’s recommendations, the United States would revive a long-dormant and little-used trade remedy statute. It would also strongly signal that the United States is increasingly tying the performance of certain sectors of the U.S. economy to a very broad definition of “national security” and taking steps to remedy perceived threats to these sectors.

Companies should closely watch these developments and examine their potential exposure to new duties and quotas under these Section 232 cases. Companies should also analyze whether their own industries and products may be the subject of similar cases in the near future or may benefit from filing a section 232 case.
Customs and International Trade Team

Primary Contacts

Nate Bolin
Partner
Washington, D.C.
(202) 230-5888
nate.bolin@dbr.com

Douglas J. Heffner
Partner
Washington, D.C.
(202) 230-5802
douglas.heffner@dbr.com