

## OVERVIEW: TRUMP ADMINISTRATION'S SECTION 232 INVESTIGATIONS

The Trump Administration launched a self-initiated Section 232 investigation of the impact of imported steel on U.S. national security on April 20 and launched a similar announcement by the President of a Section 232 investigation of imported "aluminum" on Thursday.

Section 232 of the Trade Expansion Act of 1962 authorizes the President to impose import restrictions to protect U.S. national security. <sup>1/</sup> Under Section 232, the Commerce Department initially conducts an investigation to determine the effects of imports on U.S. "national security." <sup>2/</sup> The term "national security" is not defined, although Commerce has indicated in past Section 232 investigations that a threat to U.S. national security can arise either: (i) "by fostering U.S. dependence on unreliable or unsafe imports"; or (ii) "by fundamentally threatening the ability of U.S. domestic industries to satisfy national security needs." <sup>3/</sup> The law lists various factors that must be considered by the Department, focusing on:

- Domestic production required for national defense requirements;
- Capacity of domestic industry to meet such requirements;
- Existing and anticipated availability of human resources, products, raw materials and other supplies and services essential to national defense;
- Growth requirements of domestic industries to meet defense requirements;
- Quantity, quality, availability, and character of imports as those affect domestic industries and U.S. capacity to meet defense requirements;
- Impact of imports on domestic industries and displacement by excessive imports of any domestic products causing substantial unemployment, decrease in government revenues, loss of investment or specialized skills and productive capacity; and
- Other relevant factors.

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<sup>1/</sup> 19 U.S.C. § 1862(c).

<sup>2/</sup> 19 U.S.C. § 1862(b). Section 232 investigations can be initiated by petition, self-initiated by the Department, or initiated at the request of any government department or agency.

<sup>3/</sup> *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security, an Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as amended*, U.S. Department of Commerce, Bureau of Export Administration, 2001, at 7.

“[I]f it is appropriate,” the Department may hold public hearings or otherwise afford other opportunities for interested parties to present information<sup>4/</sup> The Department must also consult with the Department of Defense. <sup>5/</sup>

If Commerce makes an affirmative finding that imports threaten to impair U.S. national security, it must submit a recommendation to the President regarding appropriate relief <sup>6/</sup> within 270 days of the date of initiation, although President Trump indicated that the steel investigation will be expedited and could lead to a report in 30-50 days. <sup>7/</sup>

At this point, much like a Section 201 investigation, the process shifts to an inter-agency deliberation over an appropriate remedy. This process results in a recommendation to the President. The President is not bound by the Department’s recommendation, and in some cases Commerce’s relief recommendations have been significantly modified. If Commerce determines that the national security is being impaired, the President must determine within 90 days if he concurs with the Secretary’s determination of a threat to national security and identify an appropriate remedial action. The President must implement any action within 15 days of making an affirmative determination to grant import or other relief, <sup>8/</sup> and submit a report to Congress within 30 days of the determination.

Section 232 investigations are rare. Indeed, the last one occurred in 2001. <sup>9/</sup> Since the Trade Expansion Act’s passage in 1962, there have been 26 investigations with a handful resulting in the imposition of import restrictions. In 1979, the President terminated oil imports from Iran, and in 1982, the President embargoed all crude oil produced in Libya. These investigations have targeted other industries as well. In the most recent Section 232 investigation in 2001, Commerce investigated iron ore and semi-finished steel, <sup>10/</sup> but determined that imports did not threaten the national security. The President agreed with the Secretary’s determination, which resulted in no action being taken against the imports.

Other investigations have focused on goods like gears (1992), uranium (1989), machine-cutting tools (1986), and chemical processing equipment (1982), among others. While only two investigations resulted in complete embargoes on imports of a particular type of good from a

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<sup>4/</sup> At the steel press conference, President Trump stated that there would be hearings and an opportunity for comment.

<sup>5/</sup> 19 U.S.C. § 1862(b)(2)(A). The Administration has indicated there will be hearings and an opportunity for public comment, and according to the Federal Register notice a hearing has been scheduled for May 24. Comments are due by May 31.

<sup>6/</sup> 19 U.S.C. § 1862(b).

<sup>7/</sup> 19 U.S.C. § 1862(b)(3)(A). This is a highly accelerated time frame and may not be feasible.

<sup>8/</sup> 19 U.S.C. § 1862(c).

<sup>9/</sup> *Supra* note 3.

<sup>10/</sup> *Id.*

certain country, other investigations led to other forms of import restrictions or government assistance. In 1986, President Reagan ordered the negotiation of voluntary restraint agreements (VRAs) with foreign machine tool suppliers and directed Commerce and Defense to initiate a program to help revitalize the domestic industry by improving the industry's integration into the defense procurement process. VRAs were negotiated with Taiwan and Japan covering 7 types of machine tools, along with informal understandings with Germany and Switzerland to show "restraint." In 1993, Commerce and the President announced that integrated circuit-ceramic package imports did not present a threat to national security, but the Department of Defense and Commerce developed an initiative to help the domestic industry. <sup>11/</sup> On occasion, industrial assistance measures have been used as a consolation prize for decisions not to provide import relief. The great majority of investigations, however, resulted in a negative determination as to a national security threat and no action being taken. There have been only two Section 232 investigations since the U.S. joined the WTO in 1995 – on crude oil in 1999 and iron and steel in 2001. In both cases BIS declined to recommend that the President take action under Section 232. <sup>12/</sup>

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<sup>11/</sup> See *The Effect of Imports of Ceramic Semiconductor Packages on the National Security, an Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962*, U.S. Department of Commerce, Bureau of Export Administration, 1993.

<sup>12/</sup> See *supra* note 3; *The Effect on the National Security of imports of Crude Oil and Refined Petroleum Products, An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended*, U.S. Department of Commerce, Bureau of Export Administration, 1999.