

## International Trade Alert

April 25, 2017

### Trump Administration Launches Probe of Steel Imports Under Trade Expansion Act

Invoking statutory authority not used in almost two decades, President Trump on April 20, 2017, directed the U.S. Department of Commerce (DOC) to conduct an investigation into the effects of steel imports on U.S. national security. Citing the more than 150 antidumping and countervailing orders currently in place on steel products imported from various countries, the Presidential Memorandum announcing the investigation claims that U.S. steel producers continue to be harmed by continued unfair trade practices, such as subsidies provided by foreign governments and excess production capacity in producing countries. These systemic trade abuses, according to the Presidential Memorandum, jeopardize long-term investment in the U.S. industry and weaken the pool of qualified workers for this strategic industry.

Section 232 of the Trade Expansion Act of 1962, the legal authority cited in the Presidential Memorandum, provides broad discretion to the President to impose trade restraints upon a finding that imports of a given product threaten U.S. national security. DOC last conducted an investigation under Section 232 of the Trade Expansion Act in 2001, when it examined whether U.S. imports of iron ore and semifinished steel threatened to impair national security. DOC found that they did not, and the President took no action to restrain imports.

Past investigations under Section 232 have only rarely led to the imposition of import restraints. The most recent such occurrence was in the early 1990s, when an investigation regarding imports of certain machine tools culminated in voluntary restraint agreements (VRAs) with Japan and Taiwan.

The new Presidential Memorandum directs DOC to address the following specific aspects of U.S. steel production in its investigation:

- whether domestic steel production adequately meets the needs of U.S. national defense requirements
- the impact of foreign competition on the U.S. steel industry in light of the relationship between economic and national security
- unemployment and other effects stemming from the displacement of domestically produced steel by imports
- the likely effectiveness of efforts to negotiate a reduction in excess global steel capacity.

Under Section 232, the Secretary of Commerce is required to report the findings and recommendations resulting from DOC's investigation to the President within 270 days. In this case, however, the Trump

administration is seeking to complete DOC's report on an expedited schedule, well in advance of the maximum statutory time frame permitted by Section 232.

Within 90 days of receiving the Secretary's report, the President must determine whether he agrees with the Secretary's findings and recommendations, but he is free to take action to restrict the imports at issue regardless of those findings and recommendations. Within 30 days of the President's decision, pursuant to Section 232, he is required to report his actions to Congress. In a [Federal Register](#) notice that will be published tomorrow, DOC announced that it will hold a hearing on May 24, 2017, and will consider written submissions received by May 31, 2017.

The Trump administration's resort to Section 232 of the Trade Expansion Act now is controversial for various reasons, including because Section 232 predates the trading rules and obligations to which the United States and almost all of its major trading partners agreed to in joining the World Trade Organization (WTO). Thus, reliance by the United States on Section 232 to limit imports of steel could trigger challenges by steel-exporting countries in the WTO dispute settlement process. For example, Article XXI of the General Agreement on Tariffs and Trade (GATT) provides for a national security exception that a WTO member may lawfully rely upon to justify a restraint on trade that might otherwise violate WTO obligations. It is unclear whether the Trump administration could adequately justify any import restraints on steel resulting from the current Section 232 investigation under the Article XXI national security exception.

Additionally, Article XI of the GATT contains a strong presumption against quantitative restrictions on trade, which an import restraint under Section 232 may violate, depending on its terms. Other WTO rules may also be implicated by U.S. action under Section 232, including the national treatment requirement under GATT Article III, or the provisions of the WTO Anti-Dumping and Subsidies and Countervailing Measures Agreements that limit action against alleged dumping and subsidies to the measures specified in those agreements.

Finally, the Presidential Memorandum announcing the investigation identifies the aluminum, vehicle, aircraft, shipbuilding and semiconductor industries, along with steel, as other "core industries" that are vital to the U.S. manufacturing and defense industrial base and thus may warrant protection against alleged foreign trade abuses. The Presidential Memorandum thus signals that the Trump administration may be contemplating comparable action to potentially restrain imports in these other industrial sectors.

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