

International Trade Alert

April 20, 2016

If you read one thing...

- The United Steel Workers filed a petition with the U.S. International Trade Commission, requesting a safeguard tariff of up to 50 percent on imports of certain primary aluminum products pursuant to Section 201 of the Trade Act of 1974.
- Section 201 investigations, unlike antidumping and countervailing duty investigations, generally cover imports from all supplier countries and may result in the imposition of tariffs, quotas or other restraints on imports.
- Parties involved in the aluminum trade and related industries should prepare for participation in the investigation and the potential impact of a safeguard.



United Steel Workers File Petition Requesting Section 201 Investigation of Aluminum Imports

Background

On April 18, 2016, the United Steel Workers filed a petition with the U.S. International Trade Commission (ITC), requesting the initiation of an investigation under Section 201 of the Trade Act of 1974 on imports of primary unwrought aluminum. A Section 201 investigation, also known as a “safeguard” investigation, examines the impact on the domestic industry of all imports of a particular product without regard to their country of origin, with a limited exception for NAFTA countries. The purpose of the rare Section 201 remedy is to provide temporary import relief that will allow a U.S. industry facing serious import injury to adjust to unforeseen and increasing import competition. This Section 201 investigation is the first since 2001, when the ITC investigated imports of certain steel products, resulting in a safeguard of up to a 30 percent tariff rate on certain steel imports. In their petition, the United Steel Workers are seeking the imposition of a provisional 50 percent tariff during the pendency of the investigation and a graduated declining tariff rate for the four years following the investigation. This petition comes only 10 days after the ITC, at the request of the House Committee on Ways and Means, initiated a separate investigation of the global competitive conditions affecting the U.S. aluminum industry pursuant to Section 332(g) of the Tariff Act of 1930.

Scope of the ITC’s Investigation

The ITC’s investigation will cover all U.S. imports of primary unwrought aluminum. The petition specifically calls out imports from Canada, the United Arab Emirates, Russia, Qatar and Argentina, alleging that the

United States is the largest export market for these supplier countries. The petition claims that imports from these five countries have significantly increased, causing a major decrease in domestic production. Production of primary unwrought aluminum is, according to the petition, down 26.5 percent during the first two months of 2016, compared to the same time period in 2015.

Under Section 201, the ITC is required to examine whether primary unwrought aluminum is being imported into the United States in such increased quantities as to be a “substantial cause” of “serious injury.” This requirement is seen as more onerous for petitioners than the “material injury” standard in an antidumping or countervailing duty proceeding, because the increased imports must be “important and not less than any other cause” of the serious injury.

In making its determination on serious injury, the ITC will consider significant idling of productive facilities in the aluminum industry, the inability of a significant number of firms to carry out domestic production operations at a reasonable level of profit, and significant unemployment or underemployment in the U.S. industry. The ITC may also examine whether there is a threat of serious injury, in which case, it would consider a decline in sales or market share; a higher and growing inventory; and a downward trend in production, profit, wages, productivity or employment in the U.S. industry. The ITC will also consider the extent to which U.S. firms are unable to obtain adequate financing and the extent to which the U.S. market is the focal point for the diversion of exports of aluminum.

Notably, the petition alleges “critical circumstances,” which lengthens the timeline of the investigation, but also allows for provisional relief to be granted before the conclusion of the investigation, potentially as soon as mid-July. The petitioners are requesting a provisional tariff of up to 50 percent, which, if implemented, would remain in effect for the balance of the investigation.

If the ITC makes an affirmative serious injury determination, it may recommend action to the president in the form of an increase in, or imposition of a duty, a tariff-rate quota, modification or imposition of a quantitative restriction; the provision of trade adjustment assistance; the initiation of international negotiations to address the underlying cause of the increase; or any other action that is likely to facilitate adjustment to import competition. Any remedy recommended by the ITC or ultimately ordered by the president must be limited to the degree necessary to remedy or prevent serious injury. In this case, the petitioners are requesting an additional tariff of 50 percent in the first year following the investigation, 45 percent in the second year, 40 percent in the third year and 35 percent in the fourth year.

Timing and Political Implications

The United Steel Workers filed their petition amidst mounting concern about excess global production capacity in the steel and aluminum sectors, and at the conclusion of hearings on this issue chaired by Commerce Secretary Pritzker and U.S. Trade Representative Froman. Froman, however, reacted to the Section 201 petition with skepticism, refraining from stating whether his office would recommend to the president the requested safeguard relief in the event that the ITC reaches an affirmative determination of serious injury.

The ITC report is due by October 15, 2016, or, at the latest, by November 14, 2016. The ITC must transmit its report to the president by December 14, 2016. The president will then have until February 12, 2017, to take action. The timing is notable because the 60-day time limit for presidential action will straddle the end of the Obama administration and the first few weeks of the next administration. Concerns about trade and the health of U.S. manufacturing industries have been at the forefront of both the Republican and Democratic presidential campaigns this year, potentially creating a political environment more amenable to the imposition of safeguard relief.

The case could also draw significant opposition and, potentially, legal challenges from affected exporting countries. In 2002, after completion of the last Section 201 investigation, the United States imposed a 30 percent tariff on steel imports. Brazil, China, the EU, Japan, New Zealand, Norway, South Korea and Switzerland challenged the United States at the World Trade Organization. The United States lost its case, and the EU threatened \$2 billion in retaliatory measures against the U.S. steel, textiles and citrus fruit industries. Shortly thereafter, the Bush administration rescinded the safeguard measure.

Parties involved in the aluminum trade and related industries can expect similar vigorous opposition to the new Section 201 investigation, from both those countries that supply aluminum to the U.S. market and U.S. consuming and manufacturing industries that rely on competitively priced aluminum inputs.

Contact Information

For more information on this client alert, please contact the below:

Bernd G. Janzen

bjanzen@akingump.com

202.887.4309

Washington, D.C.

Spencer Griffith

sgriffith@akingump.com

202.887.4575

Washington, D.C.

Margaret Marsh

pmarsh@akingump.com

202.887.4381

Washington, D.C.

Shana A. Hofstetter

shofstetter@akingump.com

202.887.4473

Washington, D.C.