

US Department of Commerce Unveils Steep Tariff and Quota Recommendations Targeting Steel and Aluminum Imports

In April 2017, the US Department of Commerce self-initiated Section 232 investigations on all steel and aluminum imports from anywhere in the world. In January 2018, following public comment and interagency deliberations, Secretary of Commerce Wilbur Ross transmitted the results of his agency's investigations to the White House. These reports also contained the agency's recommendations for potential actions by the President.

On February 16, 2018, the Commerce Department [confirmed](#) that it "found that the quantities of circumstances of [steel](#) and [aluminum](#) imports 'threaten to impair the national security,'" as defined by the Section 232 statute. The Commerce Department also released the texts of its steel and aluminum reports, confirming it had recommended the President impose strict tariffs and/or quotas on potentially all steel and aluminum imports. While US President Donald Trump is not bound by these recommendations, they represent – if implemented – substantial risk to substantially all importers, suppliers, and consumers of imported steel and aluminum products across product categories and around the world.

What is Section 232?

Section 232 investigations are conducted under the authority of the *Trade Expansion Act of 1962*, as amended (19 U.S.C. § 1862). These procedures examine the effect of imports on US national security. Investigations may be initiated based on an application from an interested party, a request from the head of any department or agency, or at the self-initiation of the Secretary of Commerce.

Once an investigation is initiated, the Secretary of Commerce has 270 days to present the Department's findings and recommendations to the President. While US law requires that the Commerce Department consult with the US Department of Defense regarding the methodological and policy questions that arise during a Section 232 investigation, other government agencies, such as the Departments of State and Labor, can also participate in Section 232 interagency working groups based upon their relevant expertise and/or interest.

Ongoing Steel and Aluminum Investigations

The Commerce Department provided the public with the opportunity to comment and testify at a public hearing regarding the two separate, but parallel, steel and aluminum investigations. The Commerce Department also engaged in an interagency review process that included input from various other relevant agencies, including the Defense Department.

While the Administration originally pledged action in both investigations within weeks, the reports were ultimately transmitted to the President just shy of the 270-day deadline. Despite the strong support of US steel and aluminum producers, representatives of major domestic and international consumers cautioned that increasing costs or import restraints on steel and aluminum products could have significant negative effects across supply chains, potentially impacting US jobs. Members of the US Congress weighed in on both sides, but many of them cautioned that any Section 232 actions could hurt US businesses and lead to severe retaliatory responses from US trading partners.

Commerce Department Recommendations

On February 16, 2018, Secretary Ross held a teleconference announcing the release of the steel and aluminum reports. He explained that in each of the two reports, the Commerce Department provided the President with three separate alternatives:

1. A blanket tariff covering all imports from all countries.
2. A tariff on imports from a select group of already-chosen countries. All other countries would be subject to a quota equal to 100% of 2017 imports.
3. A quota applicable to all imports from all countries.

The Commerce Department's aluminum recommendations are as follows:

1. A tariff of at least 7.7% on all aluminum exports from all countries, or
2. A tariff of 23.6% on all products from China, Hong Kong, Russia, Venezuela and Vietnam. All the other countries would be subject to quotas equal to 100% of their 2017 exports to the United States, or
3. A quota on all imports from all countries equal to a maximum of 86.7% of their 2017 exports to the United States.

Options 1 and 3 would encompass all covered aluminum imports from all countries from around the world. Option 2 would subject products from China, Hong Kong, Russia, Venezuela and Vietnam to tariffs, and limit import quantities of products from all other countries to 2017 levels.

The Commerce Department's steel recommendations are as follows:

1. A global tariff of at least 24% on all steel imports from all countries, or
2. A tariff of at least 53% on all steel imports from 12 countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russia, South Africa, Thailand, Turkey and Vietnam) with a quota by product on steel imports from all other countries equal to 100% of their 2017 exports to the United States, or
3. A quota on all steel products from all countries equal to 63% of each country's 2017 exports to the United States.

Similar to the aluminum report, Option 1 and 2 would encompass all covered aluminum imports from all countries from around the world. Option 3 would subject products from Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russia, South Africa, Thailand, Turkey and Vietnam to import additional import tariffs, and limit import quantities of products from all other countries to 2017 levels.

In both investigations, any Section 232 tariffs would apply in addition to any duties already in place.

Covered Products

The Commerce Department set out the scope of covered products under the Harmonized Tariff Schedule (HTS). Covered aluminum products would include unwrought aluminum (7601); aluminum bars, rods and profiles (7604); aluminum wire (7605); aluminum plates, sheets, and strip, of a thickness exceeding 0.2mm (7606); aluminum foil of a thickness not exceeding 0.2mm (7607); aluminum tubes and pipes (7608); aluminum tube and pipe fittings (7609); and other articles of aluminum castings and forgings (7616.99.51.60 and 7616.99.51.70). The scope of the aluminum report does not include bauxite or alumina, aluminum waste and scrap (7602), or aluminum powders and flakes (7603).

Products covered by the steel recommendations would cover steel mill products produced by US steel companies that support defense, critical infrastructure and commercial sector applications. These products generally fall into five categories: (1) carbon and alloy flat product, (2) carbon and alloy long product, (3) carbon and alloy pipe and tube products, (4) carbon and alloy semi-finished products, and (5) stainless products. These categories are defined under the HTS as 720610 through 721650, 721699 through 730110, 730210, 730240 through 730290, and 730410 through 730690. For the purpose of reporting historical data prior to 2007, the steel investigation report also accounts for discontinued HTS codes to include: 722520, 722693, 722694, 722910, 730410, 730421, 730610, 730620, and 730660.

Both reports also recommend an appeals process for the exclusion from the tariff or quota imposed by the President through a process led by the Commerce Department, in coordination with the Defense Department and other agencies as appropriate. These exclusions would be granted by the Secretary based on a demonstration of (1) lack of sufficient US production capacity of comparable products, or (2) specific national security-based considerations.

Members of the public would be given the opportunity to comment on each exclusion request, and the process would generally be completed within 90 days of filing an application with the Commerce Secretary.

What's Next?

During his teleconference, Secretary Ross disagreed with suggestions that any 232 actions could impact US jobs in industries that rely on imported steel and aluminum products. He acknowledged the likelihood that these actions could be challenged at the WTO, but seemed unconcerned with potential retaliatory actions by US trading partners, suggesting retaliation is a risk in response to all US trade actions.

Today's recommendations to the President are simply that: recommendations. The President has substantial latitude to accept or modify these recommendations, or to take no action at all. However, the severity of the Commerce Department's recommendations, coupled with the Administration's "America First" trade policies, suggest that any decision by the President could impose substantial costs and/or import restrictions on steel and aluminum supply chains around the world. The Section 232 statute requires the President to take action within 90 days after receiving the steel and aluminum reports, or by April 11 and April 19, respectively.

Until President Trump announces his final remedy decisions, interested and affected parties will be assessing the potential impact and voicing their concerns to the White House. Squire Patton Boggs is available to assist affected parties by assessing the impact of the proposed remedies, advocating to senior Administration officials ahead of the President's final remedies, and helping parties navigate the expected exclusion process.

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