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Get Ready for Steel, Aluminum Trade Relief: Where National Security and International Trade Intersect

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May 31, 2017 – Following up on a campaign platform of support for U.S. manufacturing jobs, President Donald Trump’s administration is in the midst of broad-ranging investigations of steel and aluminum imports that could lead to tariffs, quotas or other remedies. The Commerce Department is conducting the investigations under a rarely used provision that is designed to protect U.S. national security interests. President Trump tweeted that he is looking forward to reports on the steel and aluminum investigations in June.

The assumption is that these reports will recommend relief for the steel and aluminum industries, and U.S. Secretary of Commerce Wilbur Ross hinted that quotas or tariffs may be used to provide this relief. Any resulting increases in steel and aluminum prices could impact downstream consumers of these products. Some parties are already lining up to request exclusions from the anticipated relief. In addition, other nations may take retaliatory actions that could impact key U.S. economic sectors such as agricultural or aircraft exports.

Below we provide a brief overview of how the Trump Administration may rely on a national security-focused law to protect U.S. manufacturing assets.

New Use of an Old Law: Section 232 Investigations

- **The Law.** The steel and aluminum investigations are being carried out under Section 232 of the Trade Expansion Act of 1962. Section 232 is unique among trade remedies because of its focus on the effects of imports on national security. Whereas trade actions are typically handled by the Commerce Department’s International Trade Administration and the United States Trade Representative, this national security-focused

investigation is conducted by the Bureau of Industry and Security (“BIS”) at the Commerce Department. BIS is responsible for advancing U.S. national security, foreign policy, and economic objectives.

- **Timeframe.** Section 232 provides up to 270 days for these investigations to be completed, but in this case the process is being conducted on roughly a 70 day track (assuming the Administration gets the reports to President Trump in June).
- **Process.** BIS holds public hearings and offers the opportunity to submit written comments. Then, the Secretary of Commerce presents the investigation’s findings and recommendation to the President. Based on these findings, the President is authorized to “adjust the imports of the article and its derivatives so that such imports will not threaten to impair the national security.”
- **Factors to Consider.** To determine the effect of imports on national security, BIS considers factors such as the capacity of domestic industries to meet projected national defense requirements and the availability of supplies and services essential to the national defense. BIS can also consider the broader strength of the national economy, looking at factors such as the impact of foreign competition on the economic welfare of domestic industry and the displacement of domestic products causing serious effects (including substantial unemployment or the loss of investment or specialized skills).
- **Precedents.** The current Section 232 investigations are the first such investigations in 16 years. The last Section 232 investigation was conducted by the George W. Bush Administration in 2001. Following a request from two members of the U.S. House of Representatives, the Bush Administration investigated whether imports of iron ore and semi-finished steel posed a threat to national security. The investigation concluded that, despite these imports, U.S. production of those products was sufficient to satisfy then-current and projected national security requirements. Consequently, no relief was recommended or imposed. The Bush Administration did, however, impose relief on behalf of the domestic steel industry in a separate “safeguard” investigation under Section 201 of the Trade Act of 1974. This safeguard investigation focused on the impact of imports on the economic welfare of the industry and was not predicated on national security concerns.

Ongoing Steel and Aluminum Investigations

On April 20, 2017, Secretary Ross initiated a Section 232 investigation to determine the threat to national security posed by imported steel. A week later, on April 27, 2017, the administration announced a similar investigation of aluminum imports. Public commentary on both investigations has centered on Chinese imports, but global over capacity in both steel and aluminum suggest that a global remedy could be implemented.

Unlike the 2001 Section 232 investigation that President Bush initiated at the behest of two congressmen, the Trump Administration initiated both of the pending Section 232 investigations based on its own concerns about these issues. These investigations are examining a broad range of factors that are considered “national security interests”—interests that include increases in unemployment, decreases in government revenues, and the loss of specialized skills. Relying on this broad conception of “national security” makes it easier to demonstrate a threat posed by foreign imports and makes the application of remedies more likely.

Both Section 232 investigations are providing interested parties with the opportunity to contribute by participating in public hearings or submitting written comments. The hearing on steel imports occurred on May 24, 2017, with written comments due on May 31, 2017. The hearing on aluminum is scheduled for June 22, 2017, with written comments due by June 29, 2017.

Secretary Ross Hints at Tariffs and Quotas

At the May 24 steel hearing, Secretary Ross identified several key issues including whether tariffs rate quotas or broader tariffs should be applied, how steel imports from NAFTA should be treated, and whether specific steel products or countries should be excluded from any remedies.

Of the 37 speakers who testified at the hearing, the majority were representatives of U.S. steel companies or industry groups supportive of the application of trade remedies under Section 232. Speakers:

- Emphasized the specific uses of steel in U.S. military equipment and the importance of being able to manufacture these steel components domestically.
- Discussed the broader range of national security interests that the Trump Administration appears to be considering in this investigation, such as the closure of plants, loss of jobs, and limited ability to invest in new production technologies.
- Warned that the domestic steel industry's inability to turn a profit because of low global steel prices threatens U.S. national security by undermining the industry's capacity to continue investing and innovating to meet the needs of not only U.S. military customers but also of U.S. energy producers and transporters, the aging U.S. electrical grid, and U.S. transportation infrastructure.

Some participants voiced their concerns about the use of Section 232 remedies.

- A Chinese Ministry of Commerce official argued that domestic steel producers were more than able to meet current and projected demand by the U.S. military.
- A European steel association representative agreed that the global overproduction of steel is a significant cause for concern but called for collective action rather than a unilateral decision by the U.S. Government based on a national security rationale.
- Other participants representing domestic manufacturers of products such as tires and tin cans asked that certain steel products be excluded from any Section 232 remedies because of insufficient domestic production.
- Finally, some speakers raised concerns that Section 232 remedies could have a negative impact on import-related industries like shipping or lead to retaliation against other key U.S. sectors like agriculture or defense items.

Conclusion

President Trump appears eager to conclude these investigations and take action as soon as possible. Although it remains to be seen what remedies the Trump Administration would apply if the reports conclude that steel and aluminum imports threaten U.S. national security, no one missed Secretary Ross's reference to tariff rate quotas or other tariffs as remedies under consideration. If tariff rate quotas are adopted, the U.S. Government could set a quota and apply higher tariffs for amounts over this quota. There could be exclusions where there are no U.S. products that are good substitutes or where there is less than adequate supply of such U.S. substitutes. It will be interesting to see what processes are established for next steps after the investigations are completed in June.

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