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Trump Administration Announces Section 232 National Security Investigation of Titanium Sponge Imports

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March 6, 2019 – On March 4, 2019, Commerce Department Secretary Wilbur Ross announced an investigation of titanium sponge imports under Section 232 of the Trade Expansion Act of 1962, which authorizes Commerce, in consultation with the Defense Department and other U.S. officials, to “determine the effects on the national security of imports.” The President may take action upon an affirmative determination that the imports are being imported “in such quantities or under such circumstances as to threaten or impair” U.S. national security. Presidential actions may be permanent or “for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security.”

In 2017, the United States imported \$207 million in titanium sponge, mostly from Japan, Kazakhstan, and Ukraine. (In 2018 through November, U.S. imports totaled \$199 million.) The product is a corrosion-resistant structural metal used in “a wide range of defense applications” according to Secretary Ross, including military aircraft and other equipment, such as space vehicles, satellites, naval vessels, missiles, and munitions.

The only U.S. producer, Titanium Metals Corp. (known as “Timet”), petitioned the Commerce Department for the Section 232 investigation, after unsuccessfully seeking import relief in the 2017 antidumping and countervailing duty investigations of imports from Japan and Kazakhstan. That case did not proceed after the U.S. International Trade Commission (an independent agency) determined that the domestic industry was not materially injured, or threatened with material injury, by reason of imports from those countries. The legal standard and procedure for Section 232 investigations is significantly different. The Commerce Department’s Bureau of Industry and Security holds public hearings and allows written submissions in support of and in opposition to any import relief. If Commerce makes an affirmative finding that imports pose a risk to national security (as broadly defined in the statute), the President has complete discretion whether to impose import relief or not, which countries will be subject to the relief, what specific relief to impose (e.g. tariffs, quotas), etc.

Once the investigation is initiated, a report to the President is due within 270 days, including the Department's determination and recommended actions, such as tariffs or quotas. The President then has 90 days from receipt of the report to determine whether he agrees with the findings and, if so, whether to take action. The President has 15 days thereafter to implement the action and 30 days to inform the Congress.

A notice will be published in the Federal Register, announcing the schedule for hearings and any written comments, as well as release of the report. Although the official date of initiation is not yet available, the Commerce Department's report is expected in November 2019 and the President's action (if any) would likely be announced in February 2020.

This is the fifth Section 232 "national security" trade investigation announced by the Trump Administration in a little less than two years. The steel and aluminum Section 232 investigations resulted in affirmative determinations, based on a relatively broad definition of "national security" to include "the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical for minimum operations of the economy and government." The President thereafter imposed 25% tariffs on steel imports and 10% tariffs on aluminum, exercising his discretion to exempt countries temporarily (including Canada, Mexico, and the European Union) or permanently (Australia). Argentina, Brazil, and South Korea negotiated quotas in the place of tariffs. The tariff on imports from Turkey was later increased to 50% due to concerns over increased imports upon devaluation of the Turkish lira. In response to U.S. industry concerns about short or inadequate domestic supply, the Administration also set up a process to request exclusion of particular products.

Another Section 232 investigation concerns automobiles, including SUVs, vans and light trucks, and automotive parts. The Commerce Department issued its report to the President on February 17, 2019, which is not yet available to the public. If the determination is affirmative, the President has until May 18, 2019 to decide whether to impose tariffs, quotas, or other measures on such imports. Any measures are already controversial – opposed by the U.S. automotive industry and major trading partners, including Canada, Mexico, and the European Union.

One other Section 232 investigation of uranium imports was petitioned by uranium mining companies Energy Fuels Inc and Ur-Energy and initiated by the Commerce Department in July 2018, is still ongoing. The public comment period has closed and the report to the President is expected in April 2019.

Until the Trump Administration, Section 232 was rarely used. There were only 26 prior investigations over the first 50 years of the provision (a period covering nine different Presidencies) with the most recent in 2001. Just eight of those investigations resulted in an affirmative determination, and Presidents imposed measures only six times.

Please contact a member of Hughes Hubbard's International Trade practice if you would like to learn more about providing comments to Commerce during this process.

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