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# Hughes Hubbard & Reed

## Trump Announces Duties on Steel and Aluminum Imports

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**March 2, 2018** – On March 1, 2018, President Trump announced his plan to impose 25% duties on steel and 10% duties on aluminum exports “for a long period of time”. In doing so, the administration has chosen an unconventional approach for dealing with findings of global overcapacity in these industries, relying on a Cold War-era national security law to justify the trade relief. Trump’s announcement follows a nearly year-long set of investigations by the Bureau of Industry and Security at the Department of Commerce. The impact of these duties will be massive: steel and aluminum imports covered about 2% of total U.S. goods imports in 2017, with imports of steel at US\$29 billion and aluminum at US\$17 billion. Each investigation involves far more trade than the combined value of imports covered by Trump’s tariffs on solar panels and washing machines earlier this year. Although the details are still being hammered out, the President is expected to sign a presidential proclamation confirming the duties during the week of March 5, 2018. Once signed into law, these duties will reportedly take effect by the last full week of March 2018.

U.S. companies will anxiously await confirmation of an appeal process through which they could seek product exclusions from the duties, as the rest of the world braces for the possibility of a trade war between the United States and major steel and aluminum exporting countries.

### Background/Anatomy of a Trade War

#### Section 232’s limited focus

Section 232 of the Trade Expansion Act of 1962, which is titled “Safeguarding National Security,” is a seldom-used statutory provision that directs the Secretary of Commerce to determine whether steel and aluminum imports are being imported “in such quantities or under such circumstances as to threaten to impair the national security” of the United States. Due to Section 232’s narrow focus on national security, prior U.S. administrations have tended to focus trade-related enforcement efforts on antidumping and countervailing duty (“AD/CVD”) or safeguards investigations. Indeed, the Reagan Administration, in 1986, was the last to invoke a Section 232 restriction, which was on machine tools. Even then, the remedy ordered was simply a vehicle to negotiate voluntary export restraints

with U.S. trading partners. Where the problem faced by a domestic industry is an influx of imports from around the world, the more conventional approach is to initiate a global safeguards investigation under Section 201 of the Trade Act of 1974, a provision that is designed to address just such a situation.

Section 232 has generally been reserved for circumstances where the United States has become, and is becoming, dependent on a hostile or unreliable country (or countries) for supply of a defense-critical material. Thus, when the George W. Bush Administration investigated imports of steel slab and iron ore under Section 232, it did not impose relief, because domestic supplies of those products were adequate to serve U.S. defense needs. But the Trump Administration takes a more expansive view of national security, focusing on economic welfare of defense-critical U.S. industries, not merely on their capacity – alone or in combination with the capacity of our close allies – to provide for U.S. defense needs.

One of the problems with this more elastic definition of national security is that it provides an umbrella for other countries to take similar action in regard to any product deemed to have a wartime use. Moreover, the World Trade Organization (“WTO”) may be reluctant to challenge any member country’s assertion of a national security interest in limiting imports. Thus, other countries around the world may quickly follow suit. At a minimum, they are expected to initiate their own investigations to respond to the threat of diversion of steel and aluminum exports into their markets – exports that would otherwise have been shipped to the United States.

### **Timeline of the steel and aluminum investigations**

In April 2017, President Trump instructed Secretary of Commerce Wilbur Ross to initiate two separate investigations to determine the effect of imported steel and aluminum products on U.S. national security under Section 232. The law required Secretary Ross to complete his investigations within 270 days from initiation. The Commerce Department’s Bureau of Industry and Security (“BIS”) was tasked with handling the investigations, and BIS issued its reports and recommendations to President Trump in mid-January 2018.

In its reports, BIS determined that steel and aluminum imports threaten to impair U.S. national security. BIS recommended three alternative remedies: (i) a global quota on all imported steel and aluminum products, fixed as a specified percentage (63% for steel and 86.7% for aluminum) of 2017 import levels, and applied on a country and product basis; (ii) a global duty of 24% on imported steel and 7.7% on aluminum products, on top of any active AD/CVD duties; or (iii) targeted tariffs (on top of any active AD/CVD duties) on all imported steel and aluminum products from major exporting countries, with all remaining countries limited quantitatively to 100% of their 2017 import levels. President Trump, who is not bound by these recommendations, appears to have opted for the global duties, but at rates in excess of those recommended by BIS. The statute requires President Trump to submit a statement of reasons to Congress within 30 days of signing the proclamation.

### **Possibility of Country and Product Exclusions**

BIS advised that, in adopting his preferred policy option, President Trump could exempt certain countries based on overriding U.S. economic or national security interests. BIS also recommended that corresponding adjustments be made to the final duty imposed on the remaining countries, so as to ensure that overall imports of steel and aluminum remain at or below the levels needed to allow the two U.S. industries to meet their target capacity rates. If President Trump accepts these recommendations, he may clarify which countries are excluded from the duties, if any, and adjust the duties in his proclamation.

BIS also recommended providing for an appeal process by which affected U.S. entities could seek a product-based exclusion from the duties. Under this recommended process, Secretary Ross would grant exclusions based on: (i) a demonstrated lack of sufficient U.S. production capacity of comparable products or (ii) specific national security considerations. The proposed appeal process would include a public comment period and, in general,

would be completed within 90 days of an application being filed with BIS. BIS would lead the process, in coordination with the Department of Defense and such other agencies as are appropriate. Should exclusions be granted pursuant to this process, Secretary Ross would consider whether the duties for the remaining products would need to be adjusted to ensure that target capacity levels are met.

## **Conclusion**

President Trump is expected to sign the steel and aluminum duties into law during the week of March 5, 2018. If he does so, these duties are expected to take effect 15 days later, before the end of March 2018. It is important to be aware that the reported 25% and 10% figures may change if President Trump opts to grant country exclusions, which he may employ to limit the extent of a potential trade war. U.S. industries facing the prospects of higher steel and aluminum import prices may consider seeking product exclusions, by making use of any appeals process that is established by the President's proclamation.

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