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Trump Expands Section 232 Duties to Downstream Steel and Aluminum Products

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February 7, 2020 – On Friday, January 24, 2020, President Trump expanded the Section 232 tariffs on raw steel and aluminum to include downstream products, such as nails, staples, and electrical wires, among many others. According to President Trump, imports of derivative steel and aluminum products have surged since the initial imposition of tariffs on steel and aluminum, indicating that foreign producers are attempting to “circumvent” the Section 232 duties. The expanded tariffs will go into effect on February 8, 2020, and may invite new legal challenges to the President’s actions under Section 232.

Background

The Trump Administration initially imposed tariffs on steel and aluminum products in March 2018 under Section 232 of the Trade Expansion Act of 1962. Prior to the election of President Trump, Section 232 was a rarely used provision that allowed the Secretary of Commerce to investigate whether the importation of certain materials is adversely affecting the national security interests of the United States, and the provision had not been used by a U.S. president to impose trade restrictions since 1986. However, under the Trump Administration, the Department of Commerce (“Commerce”) initiated investigations into steel and aluminum imports and issued findings that steel and aluminum imports are undermining the national security interests of the United States. The reports adopted an expansive definition of national security and largely focused on economic, rather than military, issues. Following the report, the Trump Administration announced a 25 percent tariff on steel imports and a 10 percent tariff on aluminum imports, notwithstanding the country of origin. The duties currently have no expiration date.

In the months following the imposition of the Section 232 tariffs, the Trump Administration announced that certain countries would be excluded from the duties. During April and May 2018, South Korea, Brazil, and Argentina were excluded from the steel tariffs based on quota arrangements; Argentina was excluded from aluminum tariffs based on a quota arrangement; and Australia was excluded from both tariffs without a quota. In May 2019, the Trump Administration removed the tariffs on steel and aluminum imports from Canada and Mexico, citing

provisions in the draft U.S.-Mexico-Canada Trade Agreement, which was under negotiation at the time and has since been signed into U.S. law by President Trump.

Expansion of Section 232 Duties

The President's January 24 [announcement](#) expanded the scope of Section 232 tariffs to steel and aluminum derivative products. According to the President, Commerce has monitored steel and aluminum derivative products since the initial imposition of the Section 232 tariffs. While the President's announcement explained Commerce's findings, it was not accompanied by a formal report from Commerce assessing the national security risk of imports of steel and aluminum derivative products.

According to the President's announcement, Commerce has reported that domestic steel and aluminum producers' capacity utilization rates have not reached adequate levels to "remove the threatened impairment of the national security." Additionally, Commerce has concluded that the import volumes of steel and aluminum derivative products have increased substantially since imposition of the Section 232 tariffs upstream steel and aluminum, leading the Administration to claim that foreign producers are attempting to circumvent the Section 232 tariffs on steel and aluminum.

Based on Commerce's findings, President Trump has concluded that an "adjustment" to the tariffs is necessary, extending tariffs of 25 percent to certain enumerated derivatives of steel products and tariffs of 10 percent to certain derivatives of aluminum products. The announcement was accompanied by two annexes enumerating the downstream [steel](#) and [aluminum](#) products to which the tariffs would apply, which include tacks, drawing pins, certain automobile and tractor parts, and aluminum wires. The expanded tariffs go into effect at 12:01 am on February 8, 2020.

The announcement stated that reducing the imports of the products enumerated in Annex I and Annex II would alleviate the alleged "circumvention" by steel importers of the Section 232 tariffs. However, although the President cited "circumvention" by foreign steel producers as a justification for the adjustment, Section 232 does not include a provision allowing for modification of Section 232 measures based upon a finding of circumvention.

The same countries that are exempted from the original Section 232 steel and aluminum tariffs (either through quotas or trade agreements) are also exempted from the duties on the downstream products. Accordingly, Argentina, Australia, Canada, and Mexico are not subject to the new aluminum tariffs, and Argentina, Australia, Brazil, Canada, Mexico, and South Korea are exempted from the new steel tariffs.

Implications

The expansion of Section 232 duties on steel and aluminum is part of a broader campaign by the Administration to impose sweeping restrictions designed to discourage imports. Although the Administration has touted its efforts to reach trade deals with certain countries, this latest action indicates that restrictive measures will continue to be a foundation of its approach to international commerce.

On February 5, 2020, an importer [filed](#) a lawsuit challenging the Administration's authority to expand tariffs to downstream products almost two years following the initial Section 232 action, whereas the statute gives the president a 90-day window to impose trade measures following Commerce's report. According to the importer, the imposition of new tariffs outside of Section 232's statutory deadlines would require a separate investigation with respect to the derivative products. The importer has asked for a restraining order to block the imposition of the new tariffs while the case is pending.

The Court of International Trade (“CIT”) may be receptive to this argument. The CIT has allowed a lawsuit to go forward challenging Section 232 steel duties on imports from Turkey, which the Trump Administration doubled to 50 percent several months after the imposition of the duties. The CIT has suggested that, while Section 232 powers are expansive, the President must act within the enumerated timelines of the Trade Expansion Act.

Notwithstanding that suggestion, the CIT has so far declined to find the president’s broad authority under Section 232 unconstitutional. In 2019, steel importers filed a lawsuit against the United States, arguing that the Section 232 tariffs were an unconstitutional expansion of executive authority over trade policy. The CIT ruled against those importers based on existing Supreme Court precedent. However, one judge expressed concern over the “unbridled discretion” of the President under Section 232. The importers have appealed the case to the U.S. Court of Appeals for the Federal Circuit.

The extension of tariffs could also give impetus to proposed legislation amending Section 232. A bipartisan group of legislators has expressed concern over the breadth of presidential power under Section 232, and several bills have been proposed that could curtail this power. For example, Senators Pat Toomey (R-PA) and Mark Warner (D-VA) have introduced legislation that would require congressional approval of the imposition of tariffs under Section 232. Another proposal would expand Congress’s ability to reject Section 232 tariffs through a resolution of disapproval. Senator Chuck Grassley (R-IA) has suggested amending the legislation to allow the President to temporarily impose tariffs under Section 232, but require congressional approval to extend the tariffs beyond a certain period. Although there is bipartisan support for amending Section 232, any legislation must have a veto-proof two-thirds majority in each chamber of Congress, as President Trump is unlikely to cede Section 232 authority by signing such a bill into law.

If you have questions about the expansion of Section 232 tariffs, please contact one of Hughes Hubbard’s experienced international trade attorneys.

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