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## Updated: Trump Imposes Section 232 Tariffs on Steel and Aluminum Imports from the EU, Canada, and Mexico

by Practical Law Commercial Transactions

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*This comprehensive Legal Update tracks important developments in the investigation of the impact of steel and aluminum imports on US national security, conducted under Section 232 of the Trade Expansion Act of 1962. Most recently, President Trump announced the imposition of a ten percent aluminum tariff and a 25 percent steel tariff for the EU, Canada, and Mexico.*

This resource was updated on June 1, 2018 to account for President Trump's announcement of the imposition of a ten percent aluminum tariff and a 25 percent steel tariff for the EU, Canada, and Mexico (see [Update VI](#)).

Previously, on May 1, 2018 President Trump announced that a final agreement on a permanent exemption from the steel tariffs had been reached with South Korea, and that agreements in principle had been reached with Argentina, Australia, and Brazil for permanent exemptions from the steel and aluminum tariffs. The President also extended the temporary exemptions from the steel and aluminum tariffs for the EU, Canada, and Mexico through the close of May 31, 2018. A White House statement noted that this extension allowed for further negotiations for a "final" 30 days (see [Update V](#)).

The President modified the Section 232 tariffs on steel and aluminum imports by suspending the tariffs with respect to imports from certain countries before the tariffs took effect (see [Update IV](#)).

The suspension of the tariffs for certain countries and permanent exemptions granted to several others followed the US Department of Commerce's issuance of procedures for companies to request the exclusion of a product, or object to another company's request for the exclusion of a product, from the tariffs (see [Update III](#)).

The President imposed tariffs on steel and aluminum imports into the US (initially exempting imports from Canada and Mexico) under Section 232 of the Trade Expansion Act of 1962, to take effect on March 23, 2018 (see [Update II](#)).

The President's imposition of the tariffs followed the Commerce Department's determination that the present quantities of steel and aluminum imports threaten to impair US national security, due to the adverse impact on the internal economy of the US and the economic welfare of the domestic steel and aluminum industries, such that they are at risk of becoming unable to satisfy national security needs (see [Update I](#)).

For information on any developments after this Update, see [Practice Note, Key Developments Under the Trump Administration Regarding Imports and Tariffs: Tracker](#)

### US Commerce Department Announces Section 232 Investigations Into Steel and Aluminum Imports

The US Secretary of Commerce, Wilbur Ross, recently announced investigations into the impact of steel and aluminum imports on US national security. The investigations were self-initiated by the Secretary of Commerce and are being conducted under Section 232 of the Trade Expansion Act of 1962 ([19 U.S.C. § 1862](#)). President Trump directed the Secretary of Commerce to expedite the investigations in:

- A [memorandum](#) dated April 20, 2017, concerning the impact of steel imports.
- A [memorandum](#) dated April 27, 2017, concerning the impact of aluminum imports.

The Commerce Department is expected to conclude its investigations soon, perhaps as early as the end of June (see [Status of Current Investigations](#)).

This is the first time since 2001 that the Commerce Department has conducted a Section 232 investigation, and only the third time since 1980 that the President has requested or the Secretary of Commerce has self-initiated such an investigation.

According to the presidential memoranda, the investigations will focus on:

- Whether steel or aluminum imports cause American workers to lose jobs that are needed to meet national security requirements of the domestic steel and aluminum industries.
- Any negative effects of steel or aluminum imports on government revenue.
- Any harm steel or aluminum imports cause to the economic welfare of the US, recognizing the close relationship between economic prosperity and national security.

For more information, see [Legal Update, President Trump Orders Commerce Department to Investigate Effects of Imported Steel on National Security](#).

## Section 232

Section 232 of the Trade Expansion Act of 1962 authorizes the Secretary of Commerce to conduct investigations to determine the effect of imports of an article on national security ([19 U.S.C. § 1862](#)).

The Secretary of Commerce may commence an investigation on:

- A request by the head of any federal department or agency.
- Application of an interested party.
- The Secretary of Commerce's own motion.

The investigations are conducted by the Commerce Department's Bureau of Industry and Security (BIS).

After consulting with the Secretary of Defense, the Secretary of Commerce must advise the President whether the article under investigation poses a threat to national security. For example, imports of a product may:

- Foster US dependence on unreliable imports.
- Threaten the ability of US domestic industries to satisfy national security needs.

The Secretary of Commerce has up to 270 days to complete the investigation and submit a report with recommendations to the President. If there is an affirmative finding, the President has 90 days to approve the finding. If he approves an affirmative finding, the President will determine the nature and duration of action to be taken, including:

- Negotiating an agreement that limits or restricts imports of the article.
- Other actions to adjust imports of the article, including tariffs, fees, or quotas.

If the President determines that action should be taken, the action must be executed within 15 days of his determination.

For more information on Section 232, see [Practice Note, US Trade Remedies and Other Import Relief Measures: Section 232 of the Trade Expansion Act of 1962](#).

## Prior Section 232 Investigations and Outcomes

Prior to 1980, Section 232 investigations were conducted by the Treasury Department. In 1980, Congress authorized the Commerce Department to administer the statute.

Since 1980, the Secretary of Commerce has conducted 14 Section 232 investigations. In that time, the President has approved a finding of a threat to national security just three times. All three such cases involved petroleum products (both crude oil and refined products).

Most of the 14 investigations were initiated at the request of an interested private party, such as an individual producer or a manufacturing association. In only four cases was the investigation initiated by the Secretary of Commerce or at the request of another federal official:

- In 1982, President Reagan requested an investigation into crude oil from Libya. The Commerce Department reported that a 1979 investigation on oil by the Treasury Department was still valid, and concluded that the imports threatened to impair national security. The President embargoed crude oil produced in Libya.
- In 1982, the Secretary of Defense requested an investigation into nuts, bolts, and large screws of iron or steel. In 1983, the Commerce Department concluded that the imports did not threaten to impair national security.
- In 1988, the Secretary of Energy requested an investigation into uranium. In 1989, the Commerce Department concluded that the imports did not threaten to impair national security.
- In 1999, the Secretary of Commerce self-initiated an investigation into petroleum. In 2000, President Clinton determined that no action was necessary to adjust imports.

The last Section 232 investigation was initiated in 2001 at the request of congressional representatives from Minnesota and Michigan. The investigation into iron ore and semi-finished steel resulted in a finding that no action was necessary to adjust imports.

For more detailed information about prior Section 232 investigations, see the Commerce Department's [Section 232 Investigations Program Guide](#).

## **Status of Current Investigations**

Under the statute, BIS has until January 2018 to conclude the investigations and issue reports to the President. However, the President has directed the Secretary of Commerce to expedite the investigations, and Secretary Ross has stated that he expects the steel investigation to be completed by the end of June, well ahead of the statutory deadline. Though the scheduling in the aluminum investigation makes a similar timeline challenging, BIS is proceeding quickly and has moved up the period for public comment by almost a week, to June 23rd.

### **Steel Investigation**

BIS held a public hearing on the steel investigation on May 24, 2017 and solicited comments from interested parties through May 31, 2017.

In his introductory remarks at the hearing, Secretary Ross noted that if the Commerce Department determines that steel imports pose a threat to US national security, the agency must answer other key questions regarding potential remedies, including whether restrictions should cover all steel products from all countries, including NAFTA countries, or whether certain products or countries should be excluded.

At the hearing, BIS heard from representatives of the US steel industry, US importers, China, the European Union, and others. Additionally, BIS has posted on its [website](#) 193 written comments it received on the investigation. Among the issues raised at the hearing and in the comments are:

- The impact on the US of steel production from countries with state-supported steel industries, such as China.
- Whether any relief granted will also cover certain imported downstream products that incorporate steel.
- Whether imports of downstream products may be exempted from any restrictions.

On June 8, 2017, Secretary Ross [told](#) a Senate Appropriations subcommittee that he expected the steel investigation to be completed "very shortly," which is consistent with his previous statement that he expected the investigation to be completed in June.

Secretary Ross also told the subcommittee that he believes there is a genuine issue of national security, and outlined several possible actions the US could take, which include imposing:

- Tariffs that go beyond the current anti-dumping and anti-subsidy duties on steel products from specific countries.
- Quotas limiting the overall volume of steel imports.
- A combination action, known as a tariff-rate quota, in which a quota is imposed and all imports over that quota carry a tariff.

### **Aluminum Investigation**

BIS has scheduled a hearing on the aluminum investigation for June 22, 2017. Originally, public comments were due by June 29, 2017. However, BIS has since moved up the deadline to June 23rd and is encouraging interested parties to submit comments by June 20th.

## Practical Implications

Although Section 232 investigations have rarely resulted in action since the Commerce Department began administering the statute in 1980, the fact that these investigations were self-initiated by the Secretary of Commerce, rather than based on a petition by an industry group, suggests that the current administration may be more willing than its predecessors to use Section 232 to adjust imports. The investigations also appear to be tied to specific campaign promises President Trump made.

Should the Commerce Department find a threat to national security in the instances of steel and/or aluminum, there may also be consequences for other industries. President Trump's memoranda directing the Secretary of Commerce to expedite the investigations identified the following additional industries as being critical to US manufacturing and defense:

- Vehicles.
- Aircraft.
- Shipbuilding.
- Semiconductors.

In an [interview](#) with Reuters in May, Secretary Ross said that the Commerce Department is considering a Section 232 investigation on semiconductors.

If the administration takes action as a result of the current investigations, interested parties in other industries may choose to request Section 232 investigations as well. Alternatively, the President or the Secretary of Commerce may order additional investigations.

There may also be international consequences to any action resulting from the investigations. For example, US action under Section 232 may result in other countries filing challenges in the World Trade Organization (WTO), in which case the US may seek to defend its action by invoking Article XXI of the [General Agreement on Tariffs and Trade](#) (GATT).

Additionally, US actions may impact the North American Free Trade Agreement (NAFTA), which will be renegotiated starting later this year, as well as other bilateral and multilateral trade agreements.

## Update I

On February 16, 2018, the US Secretary of Commerce, Wilbur Ross, [released reports](#) on the steel and aluminum Section 232 investigations. The reports conclude that imports of both steel and aluminum threaten to impair national security and offer recommendations to the President that list alternative ways of adjusting imports to reduce national security risks, including:

- For steel:
  - a global tariff of at least 24% on all steel imports from all countries; or
  - 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 US; or
  - a quota on all steel products from all countries equal to 63% of each country's 2017 exports to the US.
- For aluminum:
  - a tariff of at least 7.7% on all aluminum exports from all countries; or
  - a tariff of 23.6% on all products from China, Hong Kong, Russia, Venezuela, and Vietnam. All other countries would be subject to quotas equal to 100% of their 2017 exports to the US; or
  - a quota on all imports from all countries equal to a maximum of 86.7% of their 2017 exports to the US.

The reports state that the proposed tariffs and quotas would be in addition to any duties already in place. The reports also recommend that a process be put in place allowing the Secretary of Commerce to grant requests from US companies to exclude specific products if the US lacks sufficient domestic capacity or for national security considerations.

The results of the Commerce Department's steel and aluminum investigations were submitted to the President on January 11, 2018, and January 19, 2018, respectively, but were not released at that time. The President is required to make a decision on what, if any, action to take regarding steel

imports by April 11, 2018 and aluminum imports by April 19, 2018.

## Update II

On March 8, 2018, President Trump signed two proclamations, one covering [steel](#) and one covering [aluminum](#), imposing tariffs of 25 percent on imported steel articles and 10 percent on imported aluminum articles, effective March 23, 2018. Imports from Canada and Mexico are exempted from the tariffs, at least at this time. The tariffs are in addition to any other duties, fees, exactions, and charges applicable to steel and aluminum imports, and are to remain in effect unless they are expressly reduced, modified, or terminated.

The President has directed the Secretary of Commerce to:

- Continue to monitor imports of steel and aluminum articles.
- Periodically, in consultation with certain other federal departments and agencies, review the status of steel and aluminum imports with respect to national security.
- Inform the President of any circumstances that might:
  - indicate the need for further action by the President under Section 232; or
  - indicate that the additional tariffs are no longer necessary.

## Articles Covered

The proclamations cover:

- Steel articles classified in the following [Harmonized Tariff Schedule](#) (HTS) six-digit subheadings (including any subsequent revisions to these HTS classifications):
  - 7206.10 through 7216.50;
  - 7216.99 through 7301.10;
  - 7302.10;
  - 7302.40 through 7302.90; and
  - 7304.10 through 7306.90.
- Aluminum articles classified in various HTS headings and subheadings (including any subsequent revisions to these HTS classifications), as follows:
  - unwrought aluminum (HTS 7601);
  - aluminum bars, rods, and profiles (HTS 7604);
  - aluminum wire (HTS 7605);
  - aluminum plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607);
  - aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and
  - aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70).

For more information about the HTS classification structure, see [Practice Note, Importing Goods into the US: Overview: Tariff Classification](#).

## Countries Covered

The tariffs apply to steel and aluminum articles imported from all countries except Canada and Mexico, which are currently exempted.

The proclamations state that the appropriate means to address the threat to national security posed by imports of steel and aluminum from Canada and Mexico is to continue discussions with these two countries. In his remarks at the signing ceremony, President Trump appeared to tie the continuation of these exemptions to a successful renegotiation of NAFTA.

The proclamations leave open the possibility that other countries may be exempted in the future as a result of negotiations. The proclamations state that:

- Any country with which the US has a security relationship is welcome to discuss with the US alternative ways to address the threatened impairment of US national security caused by imports from that country.
- If the US and another country arrive at a satisfactory alternative means to address the threat to US national security, the President may remove or modify the restriction on steel or aluminum imports, as applicable, from that country.

## Opportunity for Companies to Petition for Product Exclusions

The President has authorized the Secretary of Commerce to provide relief from the tariffs if both:

- A directly affected party located in the US submits a request for exclusion.
- The Secretary of Commerce, in consultation with certain other federal departments and agencies, determines that:
  - a steel or aluminum article is not produced in the US in a sufficient and reasonably available amount or of a satisfactory quality; or
  - an exclusion is warranted based on specific national security considerations.

Within ten days after the date of the proclamations, that is, by March 18, 2018, the Secretary of Commerce is to issue procedures for requesting exclusions.

## Update III

On March 19, 2018, the US Department of Commerce, Bureau of Industry and Security (BIS), published procedures for companies to request the exclusion of a product from the Section 232 tariffs imposed on [steel](#) and [aluminum](#) imports, or to object to an exclusion request made by another company ([83 Fed. Reg. 12106](#)). The procedures for exclusion requests and objections were published as an interim final rule with immediate effect. BIS will consider comments on this rule that are received by May 18, 2018.

This process is separate and apart from the process by which countries may seek exemptions from the Section 232 tariffs. That process is being handled by the US Trade Representative.

## Process for Requesting a Product Exclusion

Only organizations and individuals using steel or aluminum in business activities in the US may file an exclusion request. Applicable business activities include construction, manufacturing, or supplying steel and aluminum products to users. Therefore, a non-US party cannot directly request an exclusion.

US organizations and individuals requesting a product exclusion must submit separate exclusion requests for products that either:

- Fall in more than one 10-digit HTS provision.
- Are covered by a common HTS subheading but have different chemistry, metallurgical properties, or surface quality (for steel) or distinct critical dimensions (for both steel and aluminum).

Requests for exclusion must be electronically filed using separate forms for [steel](#) and [aluminum](#) that are available on the BIS website. The requester must provide detailed information in the forms, including:

- The single type of steel or aluminum product required, using the ten-digit HTSUS code, including its specific dimension.
- The quantity of product required under a one-year exclusion (stated in kilograms).
- A full description of the steel or aluminum product it seeks to import, including:
  - chemical composition;
  - dimensions;
  - strength;
  - toughness;

- ductility;
  - magnetic permeability;
  - surface finish;
  - coatings; and
  - any other relevant data.
- Up to 25 pages of additional information to support the request for an exclusion.

Requests for an exclusion may be filed at any time. BIS has indicated that decisions on exclusion requests normally will be made within 90 days of the request. However, the 90-day time frame is not a deadline and decisions may take longer. Approved exclusions will:

- Generally be for one year.
- Take effect five business days after being posted on the website, [regulations.gov](#).
- Be specific to the party that requested the exclusion unless BIS approves a broader application.

### **Process for Objecting to Another Party's Exclusion Request**

Objections to requests for product exclusions may be filed by any individual or organization in the US. However, BIS has indicated it will only consider information directly related to the submitted exclusion request that is the subject of the objection. For objections to be considered, the party submitting the objection must electronically file separate forms for [steel](#) and [aluminum](#) that are available on the BIS website. The objector must provide detailed information in the forms, including:

- The steel or aluminum products the objector manufactures in the US.
- The production capabilities at steel or aluminum manufacturing facilities that the objector operates in the US.
- The availability and delivery time of the products that the objector manufactures relative to the specific steel or aluminum product that is subject to an exclusion request.

Individuals and organizations objecting to a request for exclusion should also provide specific information about the product that their company manufactures which is comparable to the product subject to an exclusion request, including:

- A discussion of the suitability of their product for the application identified in the exclusion request.
- A full technical description of the properties of their product relative to specifications provided in the exclusion request, including information on:
  - dimensions;
  - strength;
  - toughness;
  - ductility;
  - surface finish;
  - coatings; and
  - any other relevant data.

Objections to exclusion requests must be filed within 30 days of the exclusion request.

BIS will announce and post decisions on exclusion requests and objections on the website, [regulations.gov](#).

### **Update IV**

On March 22, 2018, the President issued two proclamations, one for [steel](#) and one for [aluminum](#), temporarily suspending the Section 232 tariffs on steel and aluminum imports from certain countries before the tariffs took effect. The President suspended the tariffs until May 1, 2018, pending

discussions of satisfactory long-term alternatives to address the threatened impairment to US national security posed by these imports. Temporary exemptions were issued for the following countries:

- Argentina.
- Australia.
- Brazil.
- Canada.
- Mexico.
- South Korea.
- The member countries of the European Union.

By May 1, 2018, the President will decide whether to continue to exempt these countries from the tariffs, based on the status of the discussions.

The Presidential Proclamations announcing the suspension of the tariffs also included the following additional information:

- If the President decides to grant a long-term exclusion for any country, the tariff rate on other countries' goods may need to be adjusted.
- The President will consider implementing a quota on steel or aluminum imports from exempt countries if necessary to prevent transshipments through these countries from non-exempt countries.
- Any steel or aluminum article admitted into a US foreign trade zone:
  - on or after March 23, 2018 may only be admitted as privileged foreign status and will be subject upon entry for consumption to any ad valorem rates of duty related to the classification under the applicable HTS subheading; or
  - before March 23, 2018 under privileged foreign status will likewise be subject upon entry for consumption to any ad valorem rates of duty related to the applicable HTS classification imposed by the President's Section 232 proclamations.
- If the Commerce Department approves a company's request for a product exclusion, relief will be retroactive to the date the exclusion request was posted for public comment.
- The reference to HTS subheading 7304.10 in the President's March 8 steel proclamation (see [Update II: Articles Covered](#)) is amended to read 7304.11.

## Update V

On April 30, 2018, President Trump announced in two presidential proclamations, one for [steel](#) and one for [aluminum](#), that the US has reached agreements in principle with Argentina, Australia, and Brazil on the terms of permanent exemptions for these countries from the steel and aluminum tariffs, with details to be finalized shortly. These countries will remain exempt from the tariffs pending finalization of the agreements.

The proclamations also announced that the temporary exemptions from the steel and aluminum tariffs for the member countries of the EU, Canada, and Mexico have been extended through the close of May 31, 2018. In a separate [statement](#), the White House noted that the administration was extending negotiations with these countries "for a final 30 days" and that in these negotiations, the US will focus on quotas to restrain imports, prevent transshipment, and protect the national security.

The presidential proclamation on steel also noted that the US successfully concluded discussions with South Korea resulting in a final agreement to permanently exempt South Korea from the steel tariffs. Under terms previously outlined by the USTR on March 28, 2018, the US and South Korea [agreed](#) that in exchange for a permanent exemption from the steel tariffs, South Korean steel shipments to the US will be subject to a product-specific quota equal to 70 percent of the average annual US import volume of these products between 2015 and 2017.

## Update VI

On May 31, 2018, President Trump announced in two presidential proclamations, one on [aluminum](#) and one on [steel](#), that as of June 1, 2018, the US is imposing a ten percent aluminum tariff and a 25 percent steel tariff for the EU, Canada, and Mexico.

President Trump also announced in the proclamations that the US has reached arrangements with Argentina and Australia on steel and aluminum and is excluding these countries from the tariffs. The steel proclamation noted that the US has reached an arrangement with Brazil and is excluding Brazil from the steel tariff.

The EU, Canada, and Mexico announced plans to impose retaliatory tariffs on American products.

## EU

The EU plans to [target US products](#), such as blue jeans, bourbon, and Harley-Davidson motorcycles. In addition, the EU is filing an [action](#) at the WTO against the US.

## Canada

Canada announced that it will impose [countermeasures](#) on up to \$16.6 billion in imports of steel, aluminum, and other US products. Canada will impose a 25 percent tariff on steel and other metals and a ten percent tariff on a variety of products, including aluminum, coffee, water, pizza, toilet paper, and pens. The countermeasures will take effect on July 1, 2018 and will remain in place until the US lifts the steel and aluminum tariffs against Canada.

## Mexico

Mexico [announced](#) that it would impose equivalent measures on US exports like steel, pork, apples, grapes, and cheese, among other products.

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