

# National Security Investigation of Imported Steel Could Be Prelude to Similar Actions Against Other Imports

Skadden

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On April 20, 2017, President Donald Trump directed the Department of Commerce (Commerce) to conduct an expedited investigation of the harmful impact of steel imports on U.S. national security. The investigation, which will be conducted under Section 232 of the Trade Expansion Act of 1962, may result in duties, quotas or other measures to restrict harmful imports into the United States. In calling for the investigation, President Trump highlighted other important industries, including aluminum, vehicles, aircraft, shipbuilding and semiconductors, as critical elements of U.S. national security that should be defended against unfair trade practices. Companies that make these and other products that are critical to U.S. defense and national security should closely monitor the outcome of this investigation and may wish to consider using the Section 232 mechanism to address unfair trade affecting their own industries.

The current revival of Section 232 is part of President Trump's strategy to use every tool available under U.S. law to address unfair trade practices affecting U.S. companies, workers and national security.<sup>1</sup> Since 1962, there have been 26 investigations under Section 232, covering a variety of products and industries, including iron ore, petroleum, machine tools, fasteners, and electrical and industrial equipment, among others. However, Section 232 has been used infrequently in recent decades and has rarely resulted in restrictions or other measures to address harmful imports.

There are several ways that a Section 232 case may be initiated. Specifically, Section 232(b) provides that Commerce may initiate investigations at its own initiative or at the request of the head of another U.S. government agency, or in response to an application from a company or other private party. Investigations are conducted by Commerce, which is directed to consult with other relevant agencies, including the Department of Defense. Public hearings may be conducted "if deemed appropriate" by Commerce. If Commerce finds that imports of a particular product or products threaten to impair U.S. national security, the president decides whether to impose tariffs or quotas on such imports. The president also may seek to negotiate an agreement with a foreign government to address the unfair trade that is harming U.S. national security.

One of the other notable features of Section 232 is the speed with which investigations may be conducted. The statute sets a limit of 270 days for Commerce to complete its investigation and present its findings and recommendations to the president. The president then has 90 days to determine whether he agrees with Commerce's findings and take appropriate action to adjust imports through tariffs, quotas or other measures. Commerce can, however, render its findings in a shorter period of time than the 270-day limit. President Trump and Commerce Secretary Wilbur Ross have indicated that Commerce will conduct the current steel investigation under an expedited timetable.

According to Secretary Ross, the current Section 232 investigation will address "a very wide range of steel products from a very wide range of countries." It is clear that the national security impact of such imports will be evaluated broadly and thoroughly. Indeed, in his memorandum directing the initiation of the investigation, President Trump highlighted the impact of unfairly traded steel imports on the U.S. industry's long-term investments, research and development, and the ability to maintain an adequate pool of skilled workers as among the national security factors to be considered.

<sup>1</sup> See Skadden's 2017 *Insights* article "[Significant Changes Likely for US Trade Policy and Enforcement.](#)"

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Commerce is presently conducting other proceedings that may lead to or form the basis for additional Section 232 actions and trade remedy measures against imports harming other U.S. industries. The semiconductor industry, in particular, has been the subject of intense national security scrutiny over the last two years, echoing the 1980s, when the Reagan administration took the extraordinary step of self-initiating an anti-dumping case against Japanese semiconductor manufacturers. Recently, both a public report from the President's Council of Advisors on Science and Technology and a private report developed within the Department of Defense have expressed a high level of concern over foreign attempts to acquire or undercut American integrated circuit companies. Now, the Bureau of Industry and Security within Commerce is preparing an assessment of the U.S. industrial base in integrated circuit design and manufacturing. Among the areas being addressed by that assessment are future trade policy actions to strengthen the U.S. semiconductor industrial base, including Section 232 cases, anti-subsidy enforcement (either through action at the WTO or counter-

vailing duty investigations conducted under U.S. law), and possible action by the Committee on Foreign Investment in the United States (CFIUS) to "review all proposed acquisitions of companies that control intellectual property blocks licensed in the design of integrated circuit products." Signals from within Commerce suggest that the department expects to undergo a searching review of potential national security risks to the sector and may coordinate with the Department of Defense to ensure that defense-related equities also are incorporated into its final assessment.

Companies and investors in the steel industry as well as industries such as semiconductors, aluminum, vehicles, aircraft and shipbuilding that have been highlighted by President Trump as critical to U.S. national security should closely monitor the development of the current Section 232 investigation and related actions by Commerce and engage with relevant stakeholders to advance and protect their interests.

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