

Trump Administration's Second Section 232 Investigation in a Week Focuses on National Security Threat of Aluminum Imports

Key Notes:

- On April 27, 2017, President Trump issued a Presidential Memorandum initiating a Section 232 investigation into aluminum imports.
- The U.S. Department of Commerce will investigate the national security implications of excess global aluminum production and capacity that has resulted in reduced production and the closure of smelters in the United States.
- Historically, Section 232 investigations have been rarely used, but the Trump administration has announced two investigations in one week and indicated more could follow soon.

Overview

On April 27, 2017, President Trump issued a [Presidential Memorandum](#) to Secretary of Commerce Wilbur L. Ross, Jr. directing Commerce to initiate a Section 232 investigation into the impact of aluminum imports on national security. In his comments upon announcing the investigation, Secretary Ross stated that the investigation is “warranted” since “[h]igh-strength aluminum alloys have become among the most commonly used materials to make military aircraft and aluminum armor plate is used to protect against explosives and other threats.” Commerce will investigate:

- Whether aluminum imports impair the ability of the domestic aluminum industry to meet U.S. national defense needs.
- Whether aluminum imports have any substantial effects on employment or government revenue.

- Whether aluminum imports weaken the U.S. internal economy, recognizing the close relationship between economic welfare and national security.

By law, Commerce must conclude the investigation and submit a report to the president within 270 days. If the report concludes that aluminum imports threaten U.S. national security, the president then has 90 days to accept or reject the secretary’s recommendations. If the president concurs, he may take several actions to “adjust imports,” including raising import tariffs. See Thompson Hine’s [recent International Trade Update](#) on the Section 232 steel investigation initiated by the president on April 20, 2017 for more background on the Section 232 investigation process.

Background on the U.S. Aluminum Industry

According to a Commerce fact sheet released with the Presidential Memorandum, U.S. aluminum imports in 2016 increased by 18 percent while U.S. production fell by 47 percent. Of the eight U.S.-based aluminum smelters operating at the start of 2016, seven have either shut down, reduced production or have been idled. Employment in the U.S. aluminum industry decreased by almost 13 percent from 2015 to 2016. Imports of semi-fabricated aluminum from China grew by 183 percent from 2012 to 2015, and imports of aluminum foil from China increased from zero percent of the U.S. market in 2004 to 22 percent in 2016.

Commerce has stated that only one smelter in the United States is currently capable of producing the high-purity aluminum needed for many national security applications.

Products that require such high-purity aluminum include the F-35, F-18, C-17 and next-generation military vehicles.

Secretary Ross indicated that although the United States has encouraged other countries to “reduce and address the underlying causes of excess capacity in the aluminum market,” such efforts have had “little practical effect, and have not substantially alleviated the negative effect [of] global excess capacity on the United States aluminum industry.” Canada, China, Mexico, Russia and United Arab Emirates are the top aluminum exporters to the United States for all forms of aluminum products. China’s share of the world’s aluminum production is estimated at approximately 55 percent; however, the United States imports most of its primary aluminum from Canada.

Other Aluminum Trade Actions

Other actions have also recently been undertaken in an attempt to address overcapacity in the aluminum market. In January 2017, the Obama administration filed a complaint before the World Trade Organization (WTO) alleging that China was subsidizing its aluminum producers by providing artificially cheap state-directed loans and subsidized coal and electric energy supplies. Then-U.S. Trade Representative Michael Froman stated that China’s actions in the aluminum sector violate WTO rules prohibiting subsidies that cause “serious prejudice” to other WTO members. In the complaint, the United States argues that China is violating its obligations under the WTO Agreement on Subsidies and Countervailing Measures. As a result, China’s subsidized expansion of its capacity, production and market share has caused a significant decrease in the global price for primary aluminum. This dispute is pending before the WTO dispute settlement body.

In March 2017, several U.S. aluminum producers filed antidumping and countervailing duty petitions with Commerce and the U.S. International Trade Commission (ITC) alleging that they were being injured by dumped and subsidized imports of Chinese aluminum foil. On April 24, 2017, the ITC preliminarily determined there is a reasonable indication that the industry is materially injured by Chinese aluminum foil that is being sold in the United States at less

than fair value and that is subsidized by the Chinese government. This investigation is ongoing.

Section 232: A New Trade Enforcement Tool?

Until this past week, only 26 Section 232 investigations had been initiated since this trade enforcement tool was established in the Trade Expansion Act of 1962. With these two new investigations against steel and aluminum, the total rises to 28 and the Trump administration has indicated that it may seek additional Section 232 investigations into imports of semiconductor and shipbuilding products.

Trade analysts have commented that Trump’s liberal use of Section 232 could have severe economic repercussions. Past Section 232 investigations have resulted in enforcement actions only twice. Commentators argue that such investigations have never been used before as a protectionist trade enforcement mechanism.

These Section 232 investigations may also trigger retaliatory import restrictions by those countries targeted. Concern also exists that the Trump administration may be misapplying the WTO’s national security exception, which could lead to challenges at that organization’s dispute settlement body.

Under the WTO Agreement, the United States may invoke Article XXI’s national security exception that allows WTO members to take any action “which it considers necessary for the protection of its essential security interests.” This clause permits a fairly subjective determination by each WTO member, but its invocation by the United States may be viewed as a protectionist trade barrier and an abuse of the exception. Even worse, it could potentially lead other WTO members to retaliate on “national security” grounds to restrict imports of U.S. products, thus harming U.S. exporters and consumers.

FOR MORE INFORMATION

For more information, please contact:

David Schwartz

202.263.4170

David.Schwartz@ThompsonHine.com

Mark Lunn

202.263.4115

Mark.Lunn@ThompsonHine.com

Karyna Valdes*

202.263.4183

Karyna.Valdes@Thompsonhine.com

Scott Diamond

Senior Legislative & Regulatory Policy Advisor

Not licensed to practice law

202.263.4197

Scott.Diamond@ThompsonHine.com

or any member of our [International Trade](#) group.

*Karyna is not admitted to practice in the District of Columbia. She is admitted to practice only in Florida. Her work is supervised by principals of the firm.

This advisory bulletin may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgment of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice.

Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions.

© 2017 THOMPSON HINE LLP. ALL RIGHTS RESERVED.