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Section 232 of the Trade Expansion Act of 1962

Background

On March 8, 2018, the President announced tariffs on imports of steel and aluminum after Department of Commerce (Commerce) investigations determined that current imports threaten to impair national security. Such investigations are carried out pursuant to Sec. 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862, as amended), sometimes called the "national security clause." The last time a president imposed tariffs or other trade restrictions under Section 232 was in 1986, based on a 1983 investigation into imports of machine tools. The use of Section 232 by the Trump Administration has generated active debate at the multilateral level and in Congress, including legislative initiatives to amend the congressional delegation of authority under Section 232 to the President.

Section 232 Process

Section 232 allows any department or agency head, or any "interested party," to request Commerce to initiate an investigation to ascertain the effect of specific imports on the national security of the United States. Commerce may also self-initiate an investigation.

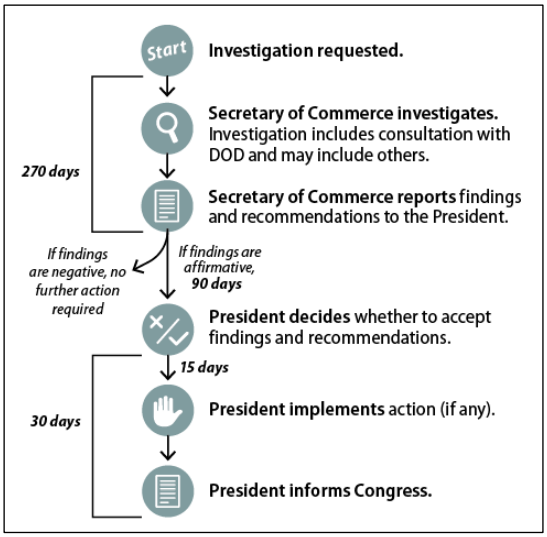
Investigation. Once a Section 232 investigation is requested in writing, Commerce must "immediately initiate an appropriate investigation to determine the effects on the national security" of the subject imports. After consulting with the Secretary of Defense, other "appropriate officers of the United States," and the public, if appropriate, Commerce has 270 days from the initiation date to prepare a report advising the President whether the targeted product is being imported "in certain quantities or under such circumstances" to impair U.S. national security, and to provide recommendations for action or inaction based on the findings.

The Bureau of Industry and Security (BIS) at Commerce conducts the investigation based on federal regulations codified in 15 CFR § 705 (Effect of Imported Articles on the National Security). In terms of national security, Commerce considers: (1) existing domestic production of the product; (2) future capacity needed; (3) the manpower, raw materials, production equipment, facilities, and other supplies needed to meet projected national defense requirements; (4) growth requirements, including the investment, exploration, and development to meet them; and (5) any other relevant factors.

Regarding the subject imports, Commerce must consider: (1) the impact of foreign competition on the domestic industry deemed essential for national security; (2) the effects that the "displacement of domestic products" cause, including substantial unemployment, decreases in public revenue, loss of investment, special skills, or production capacity; and (3) any other relevant factors that are causing, or will cause a weakening in the national economy. Commerce may request public comments or hold hearings, if appropriate. An Executive Summary of the final report (excluding any confidential or classified material) must be published in the Federal Register.

Presidential Action and Notification. If Commerce finds in the negative, Commerce informs the President and no further action is required. If Commerce determines in the affirmative, the President, upon receipt of the report, has 90 days to (1) determine whether he concurs with its findings; and (2) if the President concurs, determine the nature and duration of the action to be taken to adjust the subject imports. The President may decide to impose tariffs or quotas to offset the adverse effect, without any limits on the duration on tariff or quota amounts. The President has discretion to exclude specific product categories, countries, or provide other exemptions. After making a determination, the President must implement the action within 15 days, and submit a written statement to Congress explaining the actions or inaction within 30 days. The President must also publish his determination in the Federal Register.

Figure 1. Section 232 Investigation Process



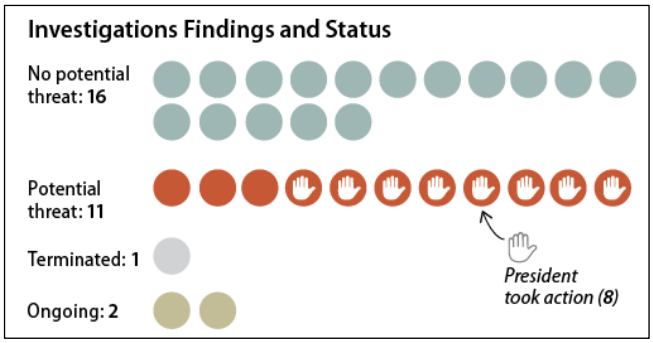
Source: CRS graphic based on 19 U.S.C. § 1862.

Prior Section 232 Actions

Prior to the Trump Administration, 26 Section 232 national security investigations were initiated, beginning in 1963. Previous investigations of manufactured goods were more tightly focused on specific products, including antifriction bearings and gears and gearing products. Of the 26 cases initiated (excluding Trump Administration investigations), Commerce made negative determinations 62% of the time. Prior to 2018, when Commerce made positive determinations, the President recommended action six times (**Figure 2**). In one case, the President sought voluntary

restraint agreements. Five positive determinations and actions were related to petroleum products or crude oil: one resulted in a conservation fee, later held illegal by a federal court; two actions were based on the Mandatory Oil Import Program that predated enactment of Section 232; and twice the President imposed an embargo (on crude oil from Iran in 1979 and on crude oil from Libya in 1982).

Figure 2. Section 232 Investigations 1963-2018



Source: CRS Graphic based on BIS data (https://www.bis.doc.gov/).

Trump Administration and Section 232

Commerce initiated its steel and aluminum investigations in April 2017 (82 FR 19205, 82 FR 21509), and sent both reports to the President on January 22, 2018. In each investigation, Commerce analyzed current and future requirements for national defense and 16 specific critical infrastructure sectors, and determined that the quantities and circumstances of imports threaten to impair the national security and provided recommendations for implementing tariffs and/or quotas.

The President concurred with Commerce's findings, and effective March 23, 2018, applied 25% tariffs on steel imports and 10 % tariffs on imports of aluminum. Initially, several countries, including Canada, Mexico, and European Union (EU) were temporarily exempted from the tariffs pending negotiations on potential alternative measures. Permanent tariff exemptions were granted to Brazil and South Korea for steel and to Argentina for steel and aluminum in exchange for quantitative limitations. Australia was exempted from both tariffs with no quantitative restrictions.

In January 2018, two U.S. mining companies requested a Section 232 investigation into uranium imports. The most recent Section 232 investigation, initiated by Commerce in May 2018, on imports of U.S. automobiles and parts has raised multiple issues, including how broadly Congress intended the national security definition to be.

How Does Section 232 Differ from Other Trade Enforcement Tools?

Section 232 is one of several U.S. policy tools to address imports and unfair trade practices. For example, Section 201 of the Trade Act of 1974 (19 U.S.C. § 2252 et seq.) addresses temporary safeguard measures for import surges of fairly traded goods based on U.S. International Trade Commission (ITC) investigations of whether the imports are causing or threaten to cause serious injury. Rather than focusing on national security, however, Section 201 investigations aim to help the U.S. industry return to health. Presidential action is also required in Section 201.

Other enforcement tools include antidumping (AD) and countervailing duty (CVD) actions, provided when a domestic industry is materially injured, or threatened with material injury, either by sales found to be at less than fair value in the U.S. market (AD) or of products found to be subsidized by a foreign government or other public entities (CVD). Presidential action is not required in these investigations; it is automatic based on affirmative findings jointly by the ITC and Commerce Department.

WTO Implications

While the U.S. unilateral action may appear to be counter to U.S. trade liberalization commitments under the World Trade Organization (WTO) agreements, Article XXI of the General Agreement on Tariffs and Trade (GATT), allows WTO members to take measures in order to protect "essential security interests." However, several WTO trading partners, including Canada, China, the EU, India, and Mexico, have challenged the current U.S. actions by alleging that they violate GATT Article I, which obligates WTO members to treat one country's goods no less favorably than another member's; and GATT Article II, which generally prohibits members from placing tariffs on goods in excess of the upper limits to which they agreed to when acceding to the WTO. Some WTO members have also asserted that the U.S. actions violate the WTO Agreement on Safeguards and have, or plan to, impose counter tariffs on U.S. imports, which also may raise questions about whether they are upholding similar WTO commitments.

Issues for Congress

The recent Section 232 investigations and actions raise a number of issues for Congress, including:

- What is the potential economic impact of the tariffs, and retaliatory tariffs, on U.S. producers, downstream domestic industries, and consumers?
- Should Congress consider amending current delegated authorities under Section 232, possibly by requiring congressional consultation or approval, requiring an economic impact study, or by further delineating the factors to be considered in an investigation?
- Should Congress consider establishing specific or enhanced new trade agreement negotiating objectives to pursue negotiations to establish multilateral rules that address newer issues such as excess capacity, state-owned enterprises, or anti-corruption?
- What is the potential impact of using unilateral enforcement tools on U.S. allies? Will they be less likely to engage or partner in other negotiations?
- Could U.S. unilateral actions and broad application of the WTO Article XXI undermine the WTO rules and the multilateral trading system?

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