

# Pedal to the Metal: Commerce Recommends Revving Up Trade Measures on Steel and Aluminum

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The Trump Administration is currently considering whether to impose tariffs and/or quotas that commentators have suggested could dramatically affect both [American steel and aluminum manufacturers](#) as well as [American businesses](#) that import more than [30% of the 100 million tons of steel](#) and more than [90% of the 5.5 million tons of aluminum](#) they use each year. As the world's [largest importer of steel](#), any such action will not only have ramifications for the global economy, but, according to several reports, could also lead to [retaliatory tariffs](#) on American exports, such as [Kentucky bourbon](#), [Wisconsin cheese](#), [orange juice](#), and [Harley-Davidson motorcycles](#).

The President's deliberations were prompted by the U.S. Department of Commerce's ("Commerce") [release](#) of two reports on February 16, 2018. The reports detail the results of Commerce's investigations, conducted pursuant to [Section 232\(b\) of the Trade Expansion Act of 1962](#), on the effects on national security of (1) [steel imports](#) (the "Steel Investigation") and (2) [aluminum imports](#) (the "Aluminum Investigation"). In both reports, Commerce found that certain steel and aluminum products are "being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security," and recommended that the President impose tariffs and/or a quota on such imports. These recommendations come less than a month after President Trump [imposed](#) a tariff-rate quota under a different statute on imports of certain [solar energy-related products](#) based on recommendations from the International Trade Commission. This post begins with a brief overview of the Steel and Aluminum Investigations; describes the legal framework for Section 232 investigations generally; examines Commerce's specific findings and recommendations in the Steel and Aluminum Investigations; outlines the next steps in these investigations; and concludes with some options for Congress.

## Background

As discussed in detail [here](#), on April 19, 2017, the U.S. Secretary of Commerce ("Secretary") [initiated](#) the Steel Investigation to determine the effects of steel imports on national security. The following day, President Trump issued a [Presidential Memorandum](#) directing the Secretary to prioritize the investigation. And, a week later, the President issued a nearly identical [Presidential Memorandum](#) directing the

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Secretary to also prioritize the Aluminum Investigation that was [initiated](#) on April 26, 2017. During both investigations, Commerce held [public hearings](#) and received numerous written [public comments](#). As the [statute](#) requires, after concluding its investigations Commerce submitted its reports to the President with its findings and recommendations for action based on these findings.

## Legal Framework

Since Section 232 was enacted in 1962, Commerce has initiated [twenty-six national security investigations](#), reaching an affirmative determination (i.e., that a specific import threatened to impair national security) in eight. (For a history of the use of Section 232 and the outcomes of these investigations, see this [CRS report](#)). The most recent investigation was conducted in 2001 and involved [imports of iron ore and semi-finished steel](#) (the “2001 Investigation”). In that investigation, Commerce was “unable to conclude that imports of iron ore and semi-finished steel threaten to impair the national security,” and therefore did not recommend that the President “take action . . . to adjust the level of imports.” Despite reaching the opposite conclusion in the 2001 Investigation, the [Steel](#) and [Aluminum](#) Investigation reports both heavily rely on the legal framework and analytical structure of the 2001 Investigation report, as discussed below.

With a scarcity of Section 232 investigations resulting in trade-related actions, there is a corresponding dearth of case law interpreting the statute and its terms, such as “national security.” While the [statute](#) does not define “national security,” it specifies a [number of factors](#) the Secretary and the President must consider during national security investigations, including (among others): “domestic production needed for projected national defense requirements”; “the importation of goods in terms of their quantities, availabilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements”; and “the close relation of the economic welfare of the Nation to our national security.” In one [case](#) that interpreted identical language in an older version of Section 232—*Federal Energy Administration v. Algonquin SNG, Inc.*—the Supreme Court examined a proposed, but rejected, amendment to Section 232, noting that “the broad ‘national interest’ language of the proposal, together with its lack of any standards for implementing that language, stands in stark contrast with [the enacted statute’s] narrower criterion of ‘national security,’” perhaps suggesting some boundaries to the reach of the term “national security.” Nonetheless, the Court did not purport to establish any such interpretative limitations.

Given the limited guidance from the statute and case law, in both the [Steel](#) and [Aluminum](#) Investigations, Commerce, after noting that “Section 232 does not contain a definition of ‘national security,’” [relied explicitly](#) on the statutory analysis from the [2001 Investigation](#). Specifically, quoting the 2001 Investigation, [Commerce stated](#) that, “in addition to the satisfaction of national defense requirements, the term ‘national security’ can be interpreted more broadly to include the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements that are critical to the minimum operations of the economy and government.” Courts, however, have not reviewed the 2001 Investigation or the propriety of its arguably broad interpretation of “national security.”

## Commerce’s Recommendations

Based on its analysis of the statutory factors, the public comments it received, and its [statutorily required consultations](#) with other agencies, including the [U.S. Department of Defense](#), Commerce reached an affirmative determination in both the [Steel](#) and [Aluminum](#) Investigations. In the [Steel Investigation](#), Commerce concluded “that the displacement of domestic steel by excessive imports and the consequent adverse impact of those quantities of steel imports on the economic welfare of the domestic steel industry, along with the circumstance of global excess capacity in steel, are ‘weakening our internal economy’ and therefore ‘threaten to impair’ the national security as defined in Section 232.” Similarly, in the [Aluminum Investigation](#), Commerce “concluded that the present quantities and circumstance of aluminum imports

are ‘weakening our internal economy’ and threaten to impair the national security . . . . The Department of Defense and critical domestic industries depend on large quantities of aluminum. But recent import trends have left the U.S. almost totally reliant on foreign producers of primary aluminum.”

Having reached final affirmative determinations in both investigations, Commerce submitted its reports to the President detailing its findings and its recommendations. With regard to imports of [steel](#), Commerce recommended one of the following measures be imposed on the product types identified in the [report](#): (1) a tariff of *at least* 24% on imports from all countries; *or* (2) a quota on imports from all countries equal to 63% of each country’s 2017 United States exports; *or* (3) a tariff of *at least* 53% on imports from twelve countries (Brazil, China, Costa Rica, Egypt, India, Malaysia, Republic of Korea, Russia, South Africa, Thailand, Turkey and Vietnam) *combined with* a quota on imports from all other countries equal to 100% of each country’s 2017 United States exports. As to [aluminum](#), Commerce recommended one of the following measures be imposed on a range of product types identified in the [report](#): (1) a tariff of *at least* 7.7% on imports from all countries; *or* (2) a quota on imports from all countries equal to a *maximum* of 86.7% of each country’s 2017 United States exports; *or* (3) a tariff of 23.6% on imports from China, Hong Kong, Russia, Venezuela and Vietnam, *combined with* a quota on imports from all other countries equal to 100% of each country’s 2017 United States exports.

For both steel and aluminum, the proposed remedy would be imposed *in addition* to any duties already in place. And, as of February 15, 2018, there were (1) [169 antidumping and countervailing duty orders](#) in place on steel imports from specific countries with 25 pending investigations that may lead to additional duties; and (2) [two antidumping and countervailing duty orders](#) in place on aluminum from specific countries with four pending investigations. Finally, *in both* reports, Commerce also “recommends an appeal process by which affected U.S. parties could seek an exclusion from the tariff or quota imposed . . . based on a demonstrated: (1) lack of sufficient U.S. production capacity of comparable products; or (2) specific national security based considerations.”

## What Happens Next?

Within ninety days of receipt of a Section 232 investigation report with an affirmative determination, the President “[shall determine](#)”: (1) whether he concurs with the Secretary’s findings; and (2) what actions should be taken to adjust the imports so they no longer threaten to impair national security. Thus, the President must make his final decision whether to implement Commerce’s recommendations as to steel imports by April 11, 2018, and as to aluminum imports by April 19, 2018. [Section 232\(c\)\(2\)](#) then directs the President to submit to Congress a written statement of “the reasons why the President has decided to take action, or refused to take action” within thirty days of the date such determinations are made.

While Section 232(f) of the statute allows Congress to pass a joint resolution of disapproval of actions taken by the President under Section 232(c), this provision is limited to instances when the President adjusts “imports of petroleum or petroleum products,” and therefore does not apply to the Steel and Aluminum Investigations. Congress could, however, pass legislation that, *inter alia*, amends or repeals Section 232 or imposes a different trade remedy. Any such action on the part of Congress, however, would be subject to the [President’s veto](#).

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