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President Trump Prioritizes Investigations Regarding the Effects of Steel and Aluminum Imports on U.S. National Security

By Stacy J. Ettinger and Steven F. Hill

President Trump has authorized investigations into whether steel imports and aluminum imports impair U.S. national security. All categories of steel and aluminum products from all countries are under review. The investigations — initiated by the U.S. Department of Commerce (“Commerce”) — could result in the imposition of sweeping import restrictions, including tariffs and quotas, with the potential for significant disruption of the steel and aluminum supply markets. Moreover, other countries could impose similar import restrictions to protect their own markets from steel and aluminum products diverted from the U.S. marketplace.

Both investigations are on a fast track — with import restrictions possible before the end of 2017. Downstream users could soon face prohibitive price hikes and sustained input shortages. Companies have the opportunity to discuss their individual circumstances or argue for exclusions during the public comment periods, although there is no guarantee the Administration will make product- or country-specific exceptions to any import restrictions. Nevertheless, stakeholders that fail to make their case now may not have another opportunity to do so.

We can help. The K&L Gates international trade and policy teams have extensive experience representing clients before the executive branch, federal agencies, and Congress, as well as counselling clients on issues involving unfair trade laws, defense and national security, and trade agreements. We are well positioned to help identify and assess opportunities and challenges and assist interested parties in responding to these investigations.

The investigations into whether steel imports and aluminum imports impair U.S. national security are discussed in greater detail below.

Investigations of the Effects of Steel and Aluminum Imports on U.S. National Security

On April 19, 2017, the Commerce Secretary initiated an investigation under Section 232 of the Trade Expansion Act of 1962¹ into whether steel imports threaten to impair U.S. national security.² On April 26, 2017, the Commerce Secretary initiated a second Section 232

¹ 19 U.S.C. 1862 (2015), <https://www.gpo.gov/fdsys/pkg/USCODE-2015-title19/html/USCODE-2015-title19-chap7-subchapII-partIV-sec1862.htm>.

² Presidential Memorandum for the Secretary of Commerce, <https://www.whitehouse.gov/the-press-office/2017/04/20/presidential-memorandum-secretary-commerce>.

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investigation into whether aluminum imports threaten to impair U.S. national security.³ President Trump has directed the Commerce Secretary to expedite both investigations.

Under Section 232, the President has broad power to “adjust” imports if excessive foreign imports of an article are found by Commerce to be a threat to U.S. national security. Adjustments undertaken by the President may include imposition of tariffs and quota restrictions on imports of the article, as well as negotiation of voluntary restraint agreements (“VRAs”) with countries producing and exporting those articles. While a Section 232 investigation must be completed within 270 days, the President has instructed Commerce to expedite both investigations, which could result in import restrictions by the end of 2017.

From a political and policy perspective, the Administration is looking to make good on its promise to address and resolve what it perceives as structural economic harm to the U.S. steel and aluminum industries from global overcapacity and unfair foreign competition. The Administration has not limited the scope of products or countries subject to the investigation, which means Commerce will review and consider the impact of all steel and aluminum imports from all countries.

Critical Factors

As part of its investigations, Commerce will examine global steel and aluminum production and overcapacity, predatory pricing practices (dumping), and foreign government subsidies provided to domestic production and exports. To determine whether steel and aluminum imports threaten U.S. economic security and military preparedness, the Commerce Secretary also will consider the following:

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

The Secretary of Defense also will weigh in with information and advice with respect to the national defense requirements for steel/aluminum and steel/aluminum products. The Commerce Secretary may request information and advice from other government agencies as well.

Opportunity to Participate in the Investigation

Although Section 232 does not require that private parties be allowed to participate in the investigation, Commerce will give interested parties the opportunity to provide written information and advice to the agency, as well as participate in a public hearing before the agency. With respect to the steel investigation, Commerce has published notice of filing requirements and deadlines, as well as the date for the hearing.⁴ Written comments will be accepted through May 31, 2017. The public hearing will be held on May 24, 2017, at

³ Presidential Memorandum for the Secretary of Commerce, <https://www.whitehouse.gov/the-press-office/2017/04/27/presidential-memorandum-secretary-commerce>.

⁴ 82 FR 19203 (April 26, 2017), <https://www.federalregister.gov/documents/2017/04/26/2017-08499/notice-request-for-public-comments-and-public-hearing-on-section-232-national-security-investigation>.

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Commerce in Washington, D.C. Notice with respect to the aluminum investigation is forthcoming.

Action by the President

Once Commerce issues its Section 232 report and recommendation, the President has 90 days to determine the nature and duration of action to adjust steel/aluminum imports.

The law gives the President complete discretion (“in the judgment of the President”) to choose the nature or duration of any action to adjust imports “so that such imports will not threaten to impair the national security.” Previous Section 232 actions included imposition of import tariffs, fees, and quotas, as well as complete embargo of subject imports. The President also has the option of negotiating agreements with trading partners to limit subject imports. The nature and duration of the President’s action to adjust steel and aluminum imports (if any) remains to be seen, as does whether the action will apply to specific countries or be global in scope.

In any case, once the President decides upon an import adjustment action, the law provides for implementation within 15 days. The President also has 30 days from the date of the decision to explain to Congress the reasons for taking (or not taking) any adjustment action. Note that if the President chooses to negotiate an agreement to limit imports, he has 180 days to do so. If the 180-day deadline is not met, or if the agreement turns out to be ineffective in eliminating the threat to national security, the President has the authority to take “such other actions as the President deems necessary.”

Implications

The Section 232 investigations of whether steel and aluminum imports threaten U.S. national security are both on an expedited schedule. Tariffs and quotas could be in place by the end of year. Sweeping import restrictions could have a significant impact on the steel and aluminum supply markets. The K&L Gates international trade and policy teams are well positioned to assist interested parties in assessing the impact on business interests at home and abroad, as well as in providing input to and engaging with government officials.

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