

Section 232 of the Trade Expansion Act of 1962

Background

The Trump Administration has conducted multiple investigations under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862, as amended) to determine if certain imports threaten to impair national security. President Trump acted after five separate investigations found potential threats; two additional investigations are ongoing. Prior to the Trump Administration, 1986 was the last time a president imposed tariffs or other trade restrictions under Section 232, based on a 1983 investigation into imports of machine tools. Recent action under Section 232 has generated considerable debate in Congress and at the multilateral level. Some in Congress favor legislative initiatives to amend the congressional delegation of authority.

Section 232 Process

Section 232 allows any department, agency head, or any “interested party” to request the Department of Commerce (Commerce) to initiate an investigation to ascertain the effect of specific imports on U.S. national security. Commerce may 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 on whether the targeted product is being imported “in certain quantities or under such circumstances” to impair U.S. national security, and to provide recommendations based on the findings.

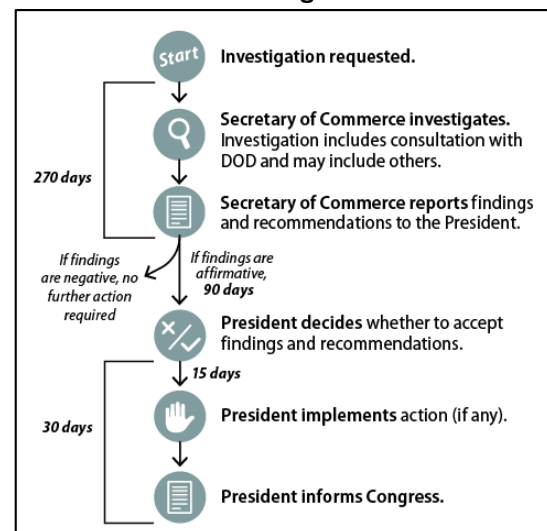
The Bureau of Industry and Security (BIS) at Commerce conducts the investigation (15 CFR Section 705). In terms of national security, Commerce considers (1) existing domestic production of the product; (2) future capacity needs; (3) manpower, raw materials, production equipment, facilities, and other 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.

On 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/she concurs with its findings; and (2) if so, 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 their duration, or take other action. The President may exclude specific products or countries. After a presidential 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 (see **Figure 1**). The President must also publish his determination in the *Federal Register*.

Figure 1. Section 232 Investigation Process



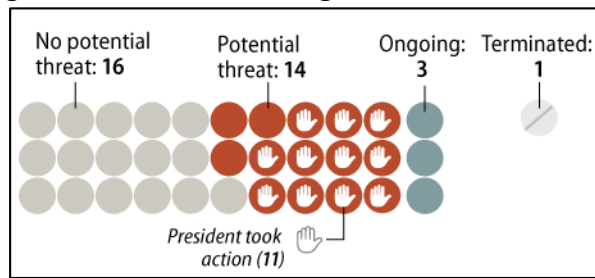
Source: CRS graphic based on 19 U.S.C. § 1862.

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 these 26 cases, 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 1963-2020



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

Trump Administration and Section 232

Commerce initiated investigations into steel and aluminum imports in April 2017. 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 of the United States and provided recommendations.

The President concurred with Commerce's findings, and effective March 23, 2018, applied tariffs of 25% and 10% on certain imports of steel and aluminum, respectively. Several countries, including the European Union (EU), were temporarily exempted from the tariffs, pending negotiations on potential alternative measures. Permanent exemptions were granted to Brazil and South Korea for steel and to Argentina for steel and aluminum in exchange for quotas. Australia was exempted from both tariffs. In May 2019, the United States, Mexico, and Canada announced a joint monitoring and consultation system to replace the tariffs. In January 2020, the President expanded the tariff scope to better address the continued threat.

Commerce initiated a Section 232 investigation into the imports of automobiles and certain automotive parts in May 2018. According to the President, Commerce concluded that the imports pose a national security threat because they affect domestic producers' global competitiveness and the research and development needed to maintain U.S. military superiority. The report has not been released. On May 17, 2019, the President directed the U.S. Trade Representative to negotiate with Japan, the EU, and others to address the threat. Autos were part of the negotiations to update free trade agreements with South Korea and with Canada and Mexico, but were excluded from the agreement with Japan. In July 2019, the President did not concur with the Commerce Section 232 finding that imports of uranium ore and related products threaten to impair national security, but did establish a working group to address the issue; the group released policy recommendations in April 2020.

In February 2020, the President agreed with the Commerce finding of a national security threat posed by imports of titanium sponge and instructed officials to negotiate with Japan to ensure U.S. access rather than to restrict imports.

In spring 2020, Commerce initiated three separate Section 232 investigations into imports that are used in national

defense applications as well as certain critical infrastructure sectors. Investigations into imports of grain-oriented electrical steel, mobile cranes, and vanadium are ongoing.

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 under 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

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." Still, several WTO trading partners, including China, the EU, and India, 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. 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 impact of the tariffs, and retaliatory tariffs, on different sectors of the U.S. economy?
- Should Congress consider amending current delegated authorities under Section 232, such as requiring an economic impact study, congressional consultation or approval, or by specifying further guidance?
- Should Congress consider establishing specific or enhanced new trade agreement negotiating objectives to pursue negotiations for multilateral rules on issues such as excess capacity or state-owned enterprises?
- What is the potential impact of using unilateral enforcement tools on U.S. allies?
- Could U.S. unilateral actions undermine the WTO rules and the multilateral trading system?

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IF10667

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