

Section 232 Investigations: Overview and Issues for Congress

Rachel F. Fefer, Coordinator
Analyst in International Trade and Finance

Vivian C. Jones, Coordinator
Specialist in International Trade and Finance

Keigh E. Hammond
Research Librarian

Brandon J. Murrill
Legislative Attorney

Michaela D. Platzer
Specialist in Industrial Organization and Business

Brock R. Williams
Analyst in International Trade and Finance

July 5, 2018

Congressional Research Service
7-5700
www.crs.gov
R45249

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862) provides the President with the ability to impose restrictions on certain imports based on an affirmative determination by the Department of Commerce (Commerce) that the product under investigation "is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." Section 232 actions are of interest to Congress because they are a delegation of Congress' constitutional authority "to regulate Commerce with foreign Nations." They also have important potential economic and policy implications for the United States.

Global overcapacity in steel and aluminum production, mainly driven by China, has been an ongoing concern of Congress. The George W. Bush, Obama, and Trump Administrations each engaged in multilateral discussions to address global steel capacity reduction through the Organization for Economic Cooperation and Development (OECD). While the United States has extensive antidumping and countervailing duties on Chinese steel imports to counter China's unfair trade practices, steel industry and other experts argue that the magnitude of Chinese production acts to depress prices globally.

Based on concerns about global overcapacity and certain trade practices, in April 2017 the Trump Administration initiated Section 232 investigations on U.S. steel and aluminum imports. Effective March 23, 2018, President Trump applied 25% and 10% tariffs, respectively, on certain steel and aluminum imports. The President temporarily exempted several countries from the tariffs pending negotiations on potential alternative measures. Permanent tariff exemptions in exchange for quantitative limitations on U.S. imports were eventually announced covering steel for Brazil and South Korea, and both steel and aluminum for Argentina. Australia was exempted from both tariffs with no quantitative restrictions. Commerce is also managing a process for potential product exclusions to limit potential negative domestic effects the tariff may have on U.S. businesses and consumers. To date, over 20,000 applications have been received.

U.S. trading partners are challenging the tariffs under World Trade Organization (WTO) rules and have threatened or enacted retaliation, risking potential escalation of retaliatory tariffs. Some analysts view the U.S. unilateral actions as potentially undermining WTO rules, which generally allow parties to act to protect "national security."

Congress enacted Section 232 during the Cold War when national security issues were at the forefront of national debate. The Trade Expansion Act sets clear steps and timelines for Section 232 investigations and actions, but allows the President to make a final determination over the appropriate action to take following an affirmative finding by Commerce that the relevant imports threaten to impair national security. Prior to the Trump Administration, there have been 26 Section 232 investigations resulting in nine affirmative findings by Commerce. In six of those cases the President imposed a trade action.

On May 23, 2018, the Trump Administration initiated an additional Section 232 investigation on U.S. automobile and automobile part imports. This investigation as well as the Administration's decision to apply the steel and aluminum tariffs on imports from Canada, Mexico, and the EU—all major suppliers of the affected imports—has prompted further questions by some Members of Congress and trade policy analysts on the appropriate use of the trade statute and the proper interpretation of threats to national security on which Section 232 investigations are based. These actions have also intensified debate over potential legislation to constrain the President's authority with respect to Section 232.

The steel and aluminum tariffs are affecting various stakeholders in the U.S. economy, prompting reactions from several Members of Congress, some in support and others voicing concerns. In

general, the tariffs are expected to benefit the domestic steel and aluminum industries, leading to potential higher steel and aluminum prices and expansion in production in those sectors, while potentially negatively affecting consumers and downstream domestic industries (e.g., manufacturing and construction) through higher costs. Congress may exercise its authority on this issue by conducting oversight of the Section 232 investigations, examining the potential economic and broader policy effects of the tariffs, or potentially considering legislation to revoke or further limit the authority it previously delegated to the President.

Contents

Introduction 1
Overview of Section 232 1
Key Provisions and Process 1
Section 232 Investigations to Date 3
Relationship to WTO 4
Recent Section 232 Actions on Steel and Aluminum 4
Commerce Findings and Recommendations 5
Presidential Actions 6
Country Exemptions 6
Product Exclusions 8
U.S. Steel and Aluminum Industries and International Trade 9
Domestic Steel and Aluminum Manufacturing and Employment 10
Global Production Trends 11
Policy and Economic Issues 12
Retaliation 12
WTO Implications 14
International Efforts to Address Overcapacity 17
Potential Economic Impact 19
Economic Dynamics of the Tariff Increase 19
Assessing the Overall Economic Impact 21
Section 232 Auto Investigation 22
Issues for Congress 23
Appropriate Delegation of Constitutional Authority 23
Interpreting National Security 24
Establishing New International Rules 24
Effects on Trade Liberalization Efforts 24
Impact on the Multilateral Trading System 25
Impact on Broader International Relationships 25

Figures

Figure 1. Section 232 Investigation Process 2
Figure 2. Section 232 Investigations 4
Figure 3. U.S. Steel and Aluminum Imports Subject to Section 232 Tariffs 10
Figure 4. Steel and Aluminum Manufacturing Employment 11

Tables

Table 1. Retaliatory Actions by U.S. Trading Partners 13

Table B-1. Section 232 Investigations and Presidential Actions, 1962-2018 27

Table C-1. Top U.S. Import Suppliers of Products Covered under Section 232 Proclamations 30

Appendixes

Appendix A. Amendments to and Past Uses of Section 232 (19 U.S.C. §1862) 26
Appendix B. Section 232 Investigations 27
Appendix C. 2017 U.S. Steel and Aluminum Imports 30

Contacts

Author Contact Information 31

Introduction

On March 8, 2018, President Trump issued two proclamations imposing duties on U.S. imports of certain steel and aluminum products, using presidential powers granted under Section 232 of the Trade Expansion Act of 1962.[1] Section 232 authorizes the President to impose restrictions on certain imports based on an affirmative determination by the Department of Commerce (Commerce) that the targeted products are being imported into the United States "in such quantities or under such circumstances as to threaten to impair the national security." Section 232 investigations and actions are important for Congress as the Constitution gives it primary authority over international trade matters. In the case of Section 232, Congress has delegated the President broad authority to impose limits on imports in the interest of U.S. national security. The statute does not require congressional approval of any presidential actions that fall within its scope. In the Crude Oil Windfall Profit Tax Act of 1980, however, Congress amended Section 232 by creating a joint disapproval resolution provision under which Congress could override presidential actions in the case of adjustments to petroleum or petroleum product imports.[2]

Section 232 is one of several tools the United States has at its disposal to address trade barriers and other foreign trade practices of concern. These include investigations and actions to address import surges that are a "substantial cause of serious injury" or threat thereof to a U.S. industry (Section 201 of the Trade Act of 1974), those that address violations or denial of U.S. benefits under trade agreements (Section 301 of the Trade Act of 1974), and antidumping and countervailing duty laws (Title VII of the Tariff Act of 1930).

Trade is an important component of the U.S. economy, and Members often hear from constituents if factories and other businesses are hurt by competing imports, or if exporters face trade restrictions and other market access barriers overseas. Section 232 actions may affect industries, workers, and consumers in congressional districts and states (both positively and negatively). The current investigations have raised a number of economic and broader policy issues for Congress.

This report provides an overview of Section 232, analyzes the Trump Administration's Section 232 investigations and actions, and considers potential policy and economic implications and issues for Congress. To provide context for the current debate, the report also includes a discussion of previous Section 232 investigations and a brief legislative history of the statute.

Overview of Section 232

Congress created Section 232 during the Cold War when national security issues were at the forefront. It has been used periodically in response to industry petitions as well as through self-initiation by the executive branch. The Trade Expansion Act establishes a clear process and sets timelines for a Section 232 investigation, but the executive branch's interpretation of "national security" and the potential scope of any investigation can be quite expansive.

Key Provisions and Process

Upon request by the head of any U.S. department or agency, by application by an interested party, or by self-initiation, the Secretary of Commerce must commence a Section 232 investigation. The

[1] P.L. 87-794; 19 U.S.C. §1862.

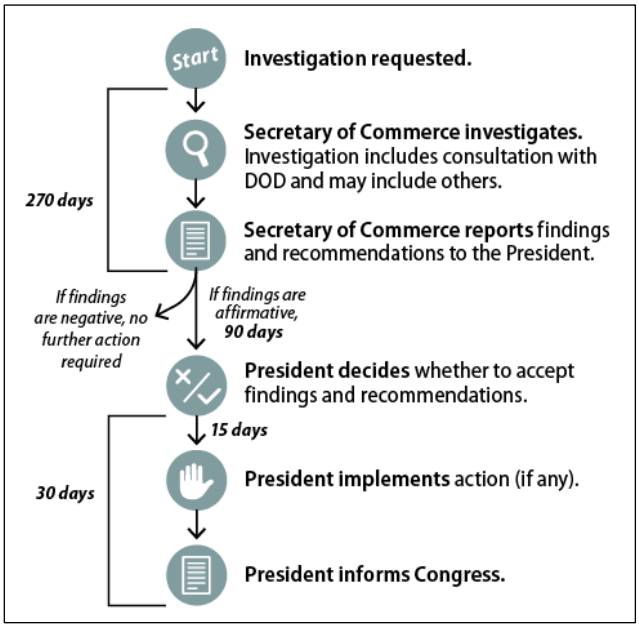
[2] P.L. 96-223, Section 402. For more information, see **Appendix A**.

Secretary of Commerce conducts the investigation in consultation with the Secretary of Defense and other U.S. officials, as appropriate, to determine the effects of the specified imports on national security. Public hearings and consultations may also be held in the course of the investigation. Commerce has 270 days from the initiation date to prepare a report advising the President whether or not the targeted product is being imported "in such quantities or under such circumstances as to threaten to impair" U.S. national security, and to provide recommendations for action or inaction based on the findings. Any portion of the report that does not contain classified or proprietary information must be published in the *Federal Register*. See **Figure 1** for the Section 232 process and timeline.

While there is no specific definition of national security in the statute, it states that the investigation must consider certain factors: domestic production needed for projected national defense requirements; domestic capacity; the availability of human resources and supplies essential to the national defense; and potential unemployment, loss of skills or investment, or government revenues resulting from displacement of any domestic products by excessive imports.[3]

Once the President receives the report, he has 90 days to decide whether or not he concurs with the Commerce Department's findings and recommendations, and to determine the nature and duration of the action he views as necessary to adjust the imports so they no longer threaten to impair the national security (generally, imposition of some trade restrictive measure). The President may implement the recommendations suggested in the Commerce report, take other actions, or not act. After making a decision, the President has 15 days to implement the action and 30 days to submit a written statement to Congress explaining the action or inaction; he must also publish his findings in the *Federal Register*.

Figure 1. Section 232 Investigation Process



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

[3] 19 U.S.C. §1862 (d). The Bureau of Industry and Security (BIS) at Commerce conducts the investigation in accordance with federal regulations codified in 15 C.F.R. part 705 (Effect of Imported Articles on the National Security).

Section 232 Investigations to Date

The Commerce Department conducted a total of 28 Section 232 investigations between 1962 and 2018 and one additional case remains ongoing (see **Figure 2**). In 16 of these cases, Commerce determined that the targeted imports did not threaten to impair national security. In 11 cases, Commerce determined that the targeted imports did impair national security and made recommendations to the President. In one case, the investigation was terminated at the petitioner's request, before Commerce completed its investigation. Prior to the Trump Administration, 10 Section 232 investigations had been self-initiated by the Administration. (For a full list of cases to date, see **Appendix B**.)

In eight investigations, all dealing with crude oil and petroleum products, Commerce decided that the subject imports threatened to impair national security. The President took action in five of these cases. In the first three cases on petroleum imports (1973-1978), the President imposed licensing fees and additional supplemental fees on imports, which are no longer in effect, rather than adjusting tariffs or instituting quotas. In two cases, the President imposed oil embargoes, once in 1979 (Iran) and once in 1982 (Libya). Both were superseded by broader economic sanctions in the following years.[4]

In the three most recent crude oil and petroleum investigations (from 1987 to 1999), Commerce determined that the imports threatened to impair national security but did not recommend that the President use his authority to adjust imports. In the first of these reports (1987), Commerce recommended a series of steps to increase domestic energy production and ensure adequate oil supplies rather than imposing quotas, fees, or tariffs because any such actions would not be "cost beneficial and, in the long run, impair rather than enhance national security."[5] In the latter two investigations (1994 and 1999) Commerce found that existing government programs and activities related to energy security would be more appropriate and cost effective than import adjustments. By not acting, the President in effect followed Commerce's recommendation.

Prior to the Trump Administration, a president last acted under Section 232 in 1983. In that case, Commerce determined that imports of metal-cutting and metal-forming machine tools threatened to impair national security. In this case, the President sought voluntary export restraint agreements with leading foreign exporters, and developed domestic programs to revitalize the U.S. industry.[6] These agreements predate the founding of the World Trade Organization (WTO), which established multilateral rules prohibiting voluntary export restraints (see "WTO Implications").

---

[4] The Section 232 petroleum embargo against Iran was revoked by Executive Order 12282 of January 19, 1981, which established broader sanctions against Iran.

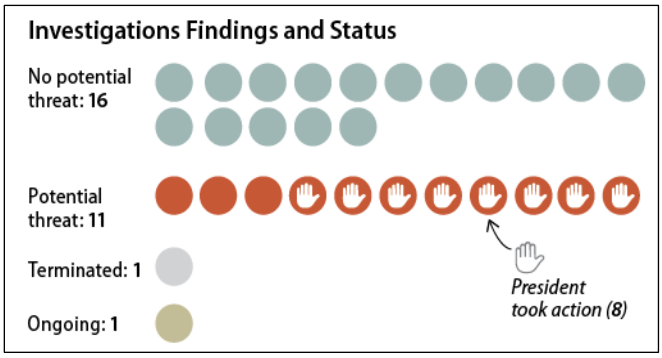
The petroleum embargo against Libya was superseded by (1) Proclamation 5141 of December 22, 1983, "Imports of Petroleum and Petroleum Products," 48 *Federal Register* 56929, and (2) Executive Order 12538, "Imports of Refined Petroleum Products from Libya," 50 *Federal Register* 47527, November 15, 1985; and then was effectively revoked by Executive Order 13357, "Termination of Emergency Declared in Executive Order 12543 With Respect to the Policies and Actions of the Government of Libya and Revocation of Related Executive Order," 69 *Federal Register* 56665, September 20, 2004, and the corresponding Treasury regulation, Department of the Treasury, Office of Foreign Assets Control, "Libyan Sanctions Regulations, Angola (UNITA) Sanctions Regulations, Rough Diamonds (Liberia) Sanctions Regulations," 61 *Federal Register* 16042, March 30, 2006.

[5] Department of Commerce, *The Effect of Crude Oil and Refined Petroleum Product Imports on the National Security*, January 1989, https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/78-crude-oil-and-petroleum-proucts-1989/file.

[6] U.S. President (R. Reagan), "Statement on the Revitalization of the Machine Tool Industry" *Weekly Compilation of Presidential Documents*, vol. 22 (Dec. 16, 1986), p. 1654.

In January 2018, two U.S. mining companies petitioned for a Section 232 investigation into uranium imports. Commerce continues to review whether to initiate an investigation.[7] On May 23, 2018, after consultations with President Trump, Commerce Secretary Wilbur Ross announced the initiation of a Section 232 investigation to determine whether imports of automobiles, including SUVs, vans and light trucks, and automotive parts threaten to impose national security.[8] A Federal Register notice on May 30th announced plans for a public hearing on July 19 and 20, 2018 and a request for public comments to inform the investigation.[9]

Figure 2. Section 232 Investigations



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

Note: For a detailed list of cases, see **Appendix B**.

Relationship to WTO

While unilateral trade restrictions may appear to be counter to U.S. trade liberalization commitments under the WTO agreements, Article XXI of the General Agreement on Tariffs and Trade (GATT), which predates and was one of the foundational agreements of the WTO, allows WTO Members to take measures to protect "essential security interests." The WTO does not specifically define the term "security interests," and WTO Members have asserted broad authority to interpret this provision. Broad national security exceptions are also included in international trade obligations at the bilateral and regional levels, and could potentially limit the ability of countries to challenge such actions by trade partners. Historically, exceptions for national security have been rarely invoked and multiple trading partners have challenged recent U.S. actions under WTO rules (see "WTO Implications").

Recent Section 232 Actions on Steel and Aluminum

In April 2017, two presidential memoranda instructed Commerce to give priority to two self-initiated investigations into the national security threats posed by imports of steel and aluminum.[10] In conducting its investigation, Commerce held public hearings and solicited public

[7] "Ross says decision on uranium 232 probe will come 'very quickly'," *Inside U.S. Trade,* June 20, 2018.

[8] U.S. Department of Commerce, "U.S. Department of Commerce Initiates Section 232 Investigation into Auto Imports," May 23, 2018, https://www.commerce.gov/news/press-releases/2018/05/us-department-commerce-initiates-section-232-investigation-auto-imports.

[9] U.S. Department of Commerce, "Notice on Section 232 National Investigation of Imports of Automobiles and Automotive Parts," 83 *Federal Register* 24735-24737, May 30, 2018.

[10] U.S. President (Trump), "Memorandum on Steel Imports and Threats to National Security," *Weekly Compilation of*

(continued...)

comments via the Federal Register and consulted with the Secretary of Defense, as required by the statute. [11] In addition to the hearings, stakeholders submitted approximately 300 comments regarding the Section 232 investigation and potential actions. Some parties (mostly steel and aluminum producers) supported broad actions to limit steel and aluminum imports, while others (mostly users and consuming industries) opposed any additional tariffs or quotas on imports. Some stakeholders sought a middle ground, endorsing limited actions to target the underlying issues of overcapacity and unfair trade practices. Still others focused on the process, voicing caution in the use of Section 232 authority and warning against an overly broad definition of "national security" for protectionist purposes.[12]

The Commerce investigations analyzed the importance of certain steel and aluminum products to national security, using a relatively broad definition of "national security," defining it to include "the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements, which are critical for minimum operations of the economy and government."[13] The broad scope of the investigations extended to current and future requirements for national defense and to 16 specific critical infrastructure sectors, such as electric transmission, transportation systems, food and agriculture, and critical manufacturing, including domestic production of machinery and electrical equipment. The reports also examined domestic production capacity and utilization, industry requirements, current quantities and circumstances of imports, international markets, and global overcapacity. Commerce based its definition of national security on a 2001 investigation on iron ore and semi-finished steel.[14] Section 232 investigations prior to 2001 generally used a narrower definition considering U.S. national defense needs only.

Commerce Findings and Recommendations

The final reports, submitted to the President on January 11 and January 22, 2018, respectively, concluded that imports of certain steel mill products[15] and of certain types of wrought and unwrought aluminum[16] "threaten to impair the national security" of the United States. The

(...continued)

Presidential Documents, April 20, 2017, https://www.gpo.gov/fdsys/pkg/DCPD-201700259/pdf/DCPD-201700259.pdf, and U.S. President (Trump), "Memorandum on Aluminum Imports and Threats to National Security," *Weekly Compilation of Presidential Documents*, April 27, 2017, https://www.gpo.gov/fdsys/pkg/DCPD-201700284/pdf/DCPD-201700284.pdf.

[11] Department of Commerce, Bureau of Industry and Security, "Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Steel," 82 *Federal Register* 19205, April 26, 2017, and Department of Commerce, Bureau of Industry and Security, "Notice of Request for Public Comments and Public Hearing on Section 232 National Security Investigation of Imports of Aluminum," 82 *Federal Register* 21509, May 9, 2017.

[12] "The case for and against 232 action on steel: Three principal positions," *Inside U.S. Trade*, June 12, 2017, and "Awaiting an aluminum decision: some key comment takeaways," *Inside U.S. Trade*, July 3, 2017.

[13] Department of Commerce, Bureau of Industry and Security, "The Effect of Imports of Steel on the National Security," p. 1, January 11, 2018.

[14] U.S. Department of Commerce, Bureau of Export Administration, "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," October 2001, https://bis.doc.gov/index.php/forms-documents?task=doc_download&gid=81.

[15] U.S. Department of Commerce, Bureau of Industry and Security, "The Effect of Imports of Steel on the National Security," January 11, 2018, https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_steel_on_the_national_security_-_with_redactions_-_20180111.pdf (hereinafter. Steel Report).

[16] U.S. Department of Commerce Bureau of Industry and Security, "The Effect of Imports of Aluminum on the (continued...)

Secretary of Commerce asserted that "the only effective means of removing the threat of impairment is to reduce imports to a level that should ... enable U.S. steel mills to operate at 80 percent or more of their rated production capacity" (the minimum rate the report found necessary for the long-term viability of the U.S steel industry and, separately, for the aluminum industry). The Secretary further recommended the President "take immediate action to adjust the level of these imports through quotas or tariffs" and identified three potential courses of action for both steel and aluminum imports, including tariffs or quotas on all or some steel imports from specific countries.

The Secretary of Defense, while concurring with Commerce's "conclusion that imports of foreign steel and aluminum based on unfair trading practices impair the national security," recommended targeted tariffs and "an inter-agency group further refine the targeted tariffs, so as to create incentives for trade partners to work with the U.S. on addressing the underlying issue of Chinese transshipment" in which Chinese producers ship goods to another country to re-export.[17]

Presidential Actions

On March 8, 2018, President Trump issued two proclamations imposing duties on U.S. imports of certain steel and aluminum products, based on the Secretary of Commerce's findings.[18] The proclamations outline the President's decisions to impose tariffs of 25% on steel and 10% on aluminum imports effective March 23, 2018, but provided for flexibility in regard to country and product applicability of the tariffs (see below). The new tariffs are to be imposed *in addition* to any duties already in place.

In the proclamations, the President established a bifurcated approach, instructing Commerce to establish a process for parties to request individual product exclusions and a U.S. Trade Representative (USTR)-led process to discuss "alternative ways" through negotiations to address the threat with countries having a "security relationship" with the United States.

The President officially notified Congress of his actions in a letter dated April 6, 2018, though several Members have been actively engaged in voicing their views since the investigations were launched.[19]

Country Exemptions

Initially, the President temporarily excluded imports of steel and aluminum products from Mexico and Canada from the new tariffs, and the Administration has implicitly and explicitly linked a successful outcome of the North American Free Trade Agreement (NAFTA) renegotiation to maintaining the exemptions. As part of those negotiations, the United States, Canada and Mexico

(...continued)

National Security," January 17, 2018, https://www.commerce.gov/sites/commerce.gov/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf (hereinafter, Aluminum Report).

[17] See Letter from James N. Mattis, Secretary of Defense, to Wilbur L. Ross, Jr., Secretary of Commerce, 2018, https://www.commerce.gov/sites/commerce.gov/files/department_of_defense_memo_response_to_steel_and_aluminum_policy_recommendations.pdf.

[18] Presidential Proclamation 9704 of March 8, 2018, "Adjusting Imports of Aluminum into the United States," 83 *Federal Register* 11619, March 15, 2018, and Proclamation 9705 of March 8, 2018, "Adjusting Imports of Steel Into the United States," 83 *Federal Register* 11625, March 15, 2018.

[19] U.S. President (Trump), "Letter to Congressional Leaders on Requests for Exclusions from United States Tariffs on Aluminum and Steel Imports," *Weekly Compilation of Presidential Documents*, April 6, 2018.

have reportedly agreed to add steel and aluminum to the tracing list used to calculate domestic content under NAFTA's Rules of Origin.[20] With regard to other countries, the President expressed a willingness to be flexible, stating that countries with which the United States has a "security relationship" may discuss "alternative ways" to address the national security threat and gain an exemption from the tariffs. The President charged the USTR with negotiating bilaterally with trading partners on potential exemptions.

On March 22, after discussions with multiple countries, the President issued proclamations temporarily excluding Australia, Argentina, Brazil, South Korea, and the European Union (EU), as well as Canada and Mexico, from the Section 232 tariffs.[21] The President gave a deadline of May 1, 2018, by which each trading partner had to negotiate "a satisfactory alternative means to remove the threatened impairment to the national security by imports" for steel and aluminum in order to maintain the exemption. On April 30, 2018, the White House extended negotiations and tariff exemptions with Canada, Mexico, and the EU for an additional thirty days, until June 1, 2018, and exempted Argentina, Australia, and Brazil from the tariffs indefinitely pending final agreements.[22] South Korea, which pursued a resolution over the tariffs in the context of discussions to modify the U.S.-South Korea (KORUS) FTA, agreed to an absolute annual quota for 54 separate sub-categories of steel and was permanently exempted from the steel tariffs.[23] South Korea did not negotiate an agreement on aluminum and has been subject to the aluminum tariffs since May 1.

On May 31, the President proclaimed Argentina and Brazil, in addition to South Korea, permanently exempt from the steel tariffs, having reached final quota agreements with the United States on steel imports.[24] Brazil, like South Korea, did not negotiate an agreement on aluminum and is now subject to the aluminum tariffs. The Administration also proclaimed aluminum imports from Argentina permanently exempt from the aluminum tariffs subject to an absolute quota.[25] The Administration proclaimed U.S. imports of steel and aluminum from Australia permanently exempt from the tariffs as well, but did not set any quantitative restrictions on Australian imports.

As of June 1, U.S. imports of steel and aluminum from Canada, Mexico, and the European Union are subject to the Section 232 tariffs. These countries are among the largest suppliers of U.S. imports of the targeted goods, accounting for nearly 50% by value in 2017 (see **Appendix C**). The imposition of tariffs on these major trading partners increases the economic significance of the tariffs and has prompted criticism from several Members of Congress, including the chairmen of the House Ways and Means and Senate Finance Committees.[26]

---

[20] "USTR demands wages be factored into NAFTA auto rules of origin," *Inside U.S. Trade*, March 26, 2018.

[21] Proclamation 9710 of March 22, 2018 "Adjusting Imports of Aluminum into the United States," 83 *Federal Register* 13355, March 28, 2018; and Proclamation 9711 of March 22, 2018, "Adjusting Imports of Steel into the United States," 83 *Federal Register* 13361, March 28, 2018.

[22] Executive Office of the President, "President Donald J. Trump Approves Section 232 Tariff Modifications," press release, April 30, 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-section-232-tariff-modifications/.

[23] U.S. Customs and Border Protection, *QB 18-118 Steel Mill Articles (AMENDED)*, May 1, 2018, https://www.cbp.gov/trade/quota/bulletins/qb-18-118-steel-mill-articles.

[24] Proclamation 9759 of May 31, 2018, "Adjusting Imports of Steel into the United States," 83 *Federal Register* 25857, June 5, 2018.

[25] Proclamation 9758 of May 31, 2018 "Adjusting Imports of Aluminum into the United States," 83 *Federal Register* 25849, June 5, 2018.

[26] Chairman Kevin Brady, "Brady Statement on Administration's Action on Steel and Aluminum Tariffs," press release, (continued...)

The Trump Administration states that discussions with Canada, Mexico, and the EU remain ongoing and that it remains open to discussions with other countries.[27] It is unclear what those negotiations may seek in terms of alternative measures, but some type of quantitative restriction seems likely given the agreements the Administration has negotiated to date with most exempted countries.[28] In addition to seeking quantitative restrictions, the Trump Administration may also pursue increasing traceability and reporting requirements, which may help limit transshipments of steel or aluminum originating from nonexempted countries.

Product Exclusions

To limit potential negative domestic impacts of the tariffs on U.S. consumers and consuming industries, Commerce published an interim final rule for how parties located in the United States may request exclusions for items that are not "produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."[29] Requests for exclusions and objections to requests have been and will continue to be posted on regulations.gov.[30] The rule went into effect the same day as publication to allow for immediate submissions.

Exclusion determinations are to be based upon national security considerations. To minimize the impact of any exclusion, the interim rule allows only "individuals or organizations using steel articles ... in business activities ... in the United States to submit exclusion requests," eliminating the ability of larger umbrella groups or trade associations to submit petitions on behalf of member companies.[31] Any approved product exclusion will be limited to the individual or organization that submitted the specific exclusion request. Parties may also submit objections to any exclusion within 30 days after the exclusion request is posted. The review of exclusion requests and objections will not exceed 90 days, creating a period of uncertainty for petitioners. Exclusions will generally last for one year. In June, Secretary Ross testified to the Senate Committee on Finance that Commerce received over 22,000 exclusion requests, approximately 10,000 of which were posted.[32] For the steel related requests, the Secretary stated that 98 had been fully processed

(...continued)

May 31, 2018, https://waysandmeans.house.gov/brady-statement-on-administrations-action-on-steel-and-aluminum-tariffs/; Chairman Orrin Hatch, "Hatch Statement on Administration Aluminum, Steel Tariff Announcement," press release, May 31, 2018, https://www.finance.senate.gov/chairmans-news/hatch-statement-on-administration-aluminum-steel-tariff-announcement.

[27] White House, "President Donald J. Trump Approves Section 232 Tariff Modifications," press release, May 31, 2018, https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-approves-section-232-tariff-modifications-2/.

[28] It appears that the quantitative restrictions negotiated by the Trump Administration to date are restrictions on U.S. imports to be administered by the United States. Some analysts have also suggested that the Administration may consider negotiating Voluntary Export Restraints (VER) to be administered by the exporting countries. The OECD defines VERs as "arrangements between exporting and importing countries in which the exporting country agrees to limit the quantity of specific exports below a certain level in order to avoid imposition of mandatory restrictions by the importing country." Article 11 of the WTO Agreement on Safeguards, prohibits WTO Members from seeking, taking, or maintaining VERS. WTO Agreement on Safeguards, Art 11(1)(b), https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm.

[29] Department of Commerce, Bureau of Industry and Security, "Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum into the United States," 83 *Federal Register* 12106, March 19, 2018.

[30] Docket Number BIS-2018-0006 (Steel); Docket Number BIS-2018-0002, (Aluminum).

[31] A parallel requirement applies for aluminum requests.

[32] Secretary Ross, U.S. Congress, Senate Committee on Finance, *Current and Proposed Tariff Actions Administered by the Department of Commerce*, 114th Cong., June 20, 2018.

as of June 20, 2018, of which 42 (43%) were approved. In addition, Commerce rejected almost 3,000 exclusion request submissions and received approximately 4,000 objections to the requests.

Some Members of Congress have raised concerns about the exclusion process. For example, in a letter to Commerce Secretary Ross, and at a recent hearing, Senate Finance Committee Chairman Orrin Hatch and Ranking Member Ron Wyden urged improvements to the product exclusion procedures on the basis that the detailed data required placed an undue burden on petitioners and objectors. They also suggested that the process appeared to bar small businesses from relying on trade associations to consolidate data and make submissions on behalf of multiple businesses. The letter further stated that Commerce had not instituted a clear process for protecting business proprietary information.[33] A bipartisan group of House Members raised concerns about the slow review process and the significant burden it places on manufacturers, especially small businesses.[34] The Members included specific recommendations such as allowing for broader product ranges to be included in a single request, allowing trade associations to petition, grandfathering in existing contracts to avoid disruptions, and regularly reviewing the tariffs' effects and sunsetting them if they have a "significant negative impact."[35]

U.S. Steel and Aluminum Industries and International Trade

The United States competes for domestic and global market share with other major steel and aluminum producers. The most direct competition comes from China, the world's largest raw steel and primary aluminum producing country. China's capacity to make both metals influences the world market most directly by lowering steel and aluminum prices and thereby the profitability of domestic U.S. producers. The Organization for Economic Cooperation and Development (OECD) began monitoring global steel production in the 1960s and tracks new capacity additions as well as plant and capacity closures. It notes that steel demand is weak globally but production continues to increase, driven by new investments around the world.[36] So far, no similar effort is underway to monitor or address aluminum overcapacity globally.

In 2017, U.S. imports of steel and aluminum products covered by the Section 232 tariffs totaled $29.0 billion and $17.4 billion, respectively (see **Figure 3**). Over the past decade, steel imports have fluctuated significantly, by value and quantity, while imports of aluminum have increased steadily. The expiration of temporary exclusions from the tariffs for Canada, Mexico, and the EU are economically significant for U.S. trade in both products. In 2017, these trading partners were the top three suppliers of U.S. steel imports facing the import tariff, together accounting for 47% of relevant U.S. steel imports.[37] Canada alone accounted for 41% of relevant U.S. aluminum imports in 2017, followed by China (11%) and Russia (9%). The countries with permanent exclusions from the tariff accounted for 20% of U.S. steel imports in 2017 and less than 5% of U.S. aluminum imports (see **Appendix C**).

[33] Letter from Senate Finance Committee Chairman Orrin G. Hatch and Ranking Member Ron Wyden to Wilbur L. Ross, Secretary of Commerce, April 19, 2018.

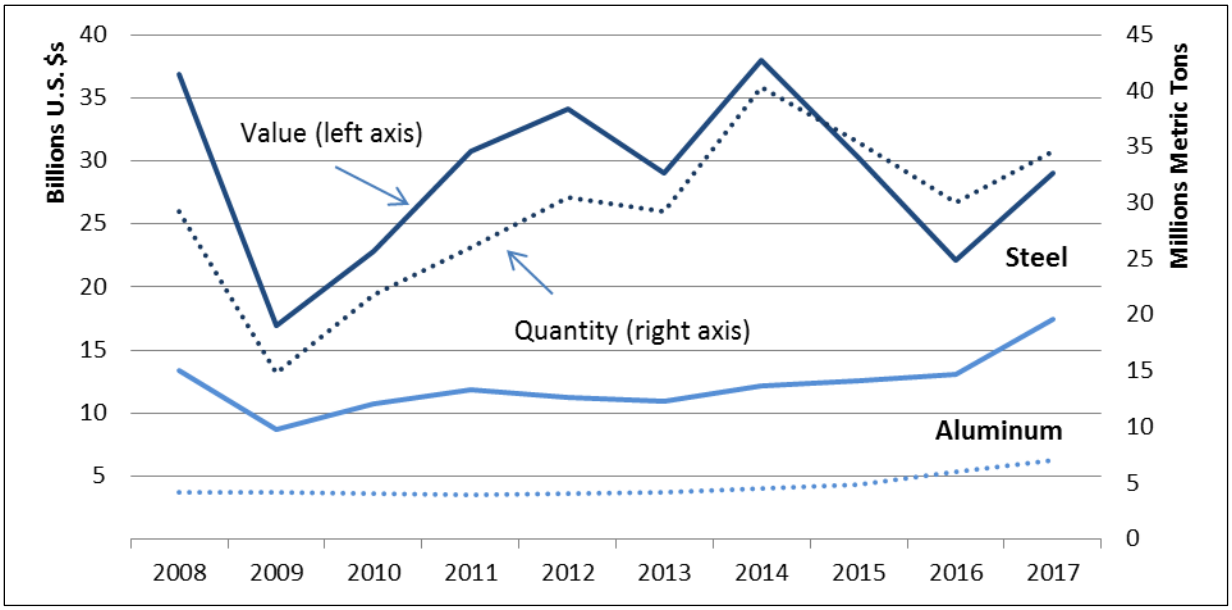
[34] MIL OSI - ForeignAffairs.co.nz, "MIL-OSI USA: Walorski Calls for Changes to Tariff Product Exclusion Process for Manufacturers," ForeignAffairs.co.nz, May 8, 2018.

[35] Ibid.

[36] Hokuto Otsuka, *Capacity Developments in the World Steel Industry*, OECD, DSTI/SC(2017)2/FINAL, Paris, August 7, 2017, http://www.oecd.org/industry/ind/CapacityDevelopmentsWorldSteelIndustry_FINAL.pdf.

[37] CRS analysis based on Census Bureau data on HTS products included in the Section 232 proclamations.

Figure 3. U.S. Steel and Aluminum Imports Subject to Section 232 Tariffs



Source: Created by CRS using data from Census Bureau on HTS products included in the Section 232 proclamations.

Domestic Steel and Aluminum Manufacturing and Employment

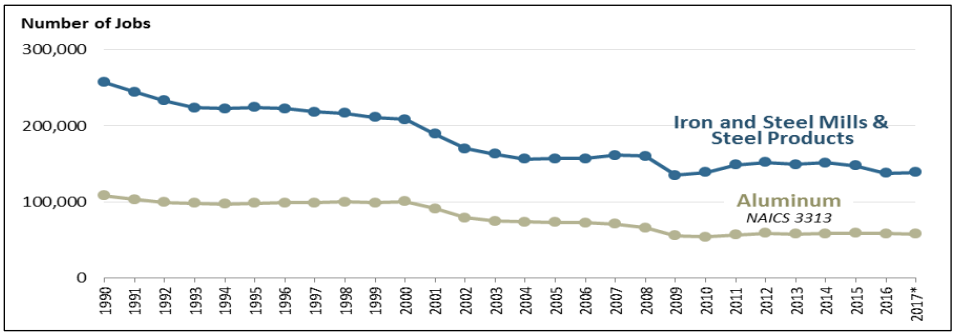
In 2017, U.S. steelmakers employed 139,900 workers (**Figure 4**), accounting for 1.1% of the nation's 12.4 million factory jobs. Employment in the steel industry has been declining for many years as new technology, particularly the increased use of electric furnaces to make steel, has reduced the demand for workers. According to the Bureau of Labor Statistics, labor productivity in steelmaking has nearly tripled since 1987 and has risen 15% over the past decade.[38] Hence, even a significant increase in domestic steel production is likely to result in a relatively small number of additional jobs.

Aluminum manufacturers employed 58,100 workers in 2017, a figure that has changed little since the 2007-2009 recession. Domestic smelting of aluminum from bauxite ore, which requires large amounts of electricity, has been in long-term decline, and secondary (recycled) aluminum now accounts for the majority of domestic aluminum production. Secondary unwrought aluminum is not covered by the Section 232 aluminum trade action.[39]

[38] Bureau of Labor Statistics, Industry Productivity and Costs, https://www.bls.gov/lpc/.

[39] The Section 232 trade action includes certain semi-finished wrought aluminum products, such as bars, rods, foil, and wire, which can be manufactured using primary aluminum, secondary aluminum, or a combination of the two.

Figure 4. Steel and Aluminum Manufacturing Employment



Source: Bureau of Labor Statistics, Current Employment Survey for North American Industry Classification System (NAICS) 3311 (iron and steel mills), 3312 (steel products), and NAICS 3313 (aluminum).

Steelmaking and aluminum smelting are both extremely capital intensive. As a result, even small changes in output can have major effects on producers' profitability. Domestic steel producers have operated at 78% or less of production capacity in recent years.[40] Aluminum smelters in the United States operated at about 43% of production capacity in 2017.[41] A stated aim of the metals tariffs is to enable U.S. producers in both sectors to use an average of 80% of their production capacity, which the Section 232 reports deem necessary to sustain adequate profitability and continued capital investment.[42]

Global Production Trends

The OECD Global Forum on Steel Excess Capacity estimates global steel overcapacity to be at more than 700 million metric tons, with more than half (425 million metric tons) accounted for by China.[43] Relatively little Chinese steel and aluminum enter the U.S. market directly, due to extensive U.S. dumping and subsidy determinations, but the large amount of Chinese production acts to depress prices globally. China has indicated that it plans to reduce its crude steelmaking capacity by 100-150 million metric tons over the five-year period from 2016 to 2020.[44]

Metals imports should be put in the context of U.S. production. In 2017, the United States produced more than twice the amount of steel it imported. According to Commerce's International Trade Administration, import penetration—the share of U.S. demand met by steel imports—reached 33% in 2016, compared to 23% in 2006.[45] Some segments of the domestic steel industry, such as slab converters, import a sizable share of their semi-finished feedstock from foreign suppliers, totaling nearly 8 million tons in 2017.[46] In the primary aluminum market, U.S.

[40] The U.S. Federal Reserve Board publishes industrial production and capacity utilization data by industry.

[41] Aluminum Report, p. 46.

[42] Steel Report, p. 4, and Aluminum Report, p. 107.

[43] Bundesministerium fur Wirtschaft und Energie, Factsheet: "Global Forum on Steel Excess Capacity and Figures for the Global Steel Market," press release, November 30, 2017. Note: Germany served as the G20 chair in 2017.

[44] Germany's Federal Ministry for Economic Affairs and Energy, *Global Forum on Steel Excess Capacity*, November 30, 2017, p. 31.

[45] Department of Commerce, International Trade Administration, *Steel Imports Report: United States*, March 2018, https://www.trade.gov/steel/countries/pdfs/imports-us.pdf, p. 6.

[46] Department of Commerce, International Trade Administration, Enforcement & Compliance, U.S. *Steel Import Monitor, Import by Country and Product Category*, 2017.

net import reliance rose to 61% in 2017 from 21% in 2013, according to the U.S. Geological Survey.[47] Most U.S. foreign trade in steel and aluminum is with Canada (see **Appendix C**).

Policy and Economic Issues

The Section 232 tariffs raise a number of issues for Congress. The economic repercussions of U.S. and foreign actions may be felt not only by domestic steel and aluminum producers, but by downstream manufacturers or other industries targeted for retaliation, or consumers. The response by other countries can have implications for the U.S. economy and multilateral world trading system. Also, other countries may be hesitant in the future to cooperate with the United States to address global issues, including steel and aluminum overcapacity, if their exports are subject to U.S. tariffs.

How U.S. trading partners respond to the Section 232 actions has varied based on the country's relationship with the United States. Some countries are pursuing direct negotiations, while keeping other countermeasures in reserve, and raising actions at the WTO (see below). Others have proposed or pursued retaliation with their own tariffs. Some companies have pursued litigation, and may also seek alternative markets for their products.

Retaliation

Several major U.S. trading partners have proposed or are currently imposing retaliatory tariffs in in response to the U.S. actions (see table below). The process of retaliation is complex given multiple layers of relevant international rules and the potential for unilateral action, which may or may not adhere to those existing rules. Both through agreements at the WTO and in bilateral and regional free trade agreements (FTAs), the United States and its trading partners have agreed to maintain certain tariff levels. Those same agreements include rules on potential responses, including formal dispute settlement procedures and in some cases commensurate tariffs, when one party increases its tariffs above agreed upon limits.[48] Other exceptions, such as antidumping tariffs, countervailing duties, and safeguards are addressed in WTO agreements.[49]

Most of the retaliatory actions of U.S. trading partners to date have been notified to the WTO pursuant to the Agreement on Safeguards. These retaliatory notifications listed below (see **Table 1**) are in addition to requests for consultations that are the first step in WTO dispute settlement proceedings (see "WTO Implications"). In addition, Japan and Russia submitted notifications to the WTO, but neither initially included a list of specific products. Notifications by other countries may follow.

[47] U.S. Geological Survey, *Aluminum Mineral Commodity Summary*, January 2018.

[48] Chad P. Bown, *Trump's Steel and Aluminum Tariffs: How WTO Retaliation Typically Works*, Peterson Institute for International Economics, March 5, 2018, https://piie.com/blogs/trade-investment-policy-watch/trumps-steel-and-aluminum-tariffs-how-wto-retaliation-typically.

[49] Antidumping tariffs are provided when a domestic industry is injured, or threatened with injury by sales found to be at less than fair value in the U.S. market, or the threat thereof; countervailing duties are provided when a domestic industry is injured, or threatened with injury, as a result of sales in the U.S. market of products found to be subsidized by a foreign government or other public entities; and safeguards are provided in response to injury to a domestic industry from a sharp increase in imports. For more information, see CRS In Focus IF10786, *Trade Remedies: Section 201 of the Trade Act of 1974*, by Vivian C. Jones and CRS In Focus IF10018, *Trade Remedies: Antidumping and Countervailing Duties*, by Vivian C. Jones.

Table 1. Retaliatory Actions by U.S. Trading Partners

Compiled as of June 25, 2018

Trading Partner	Estimated Value of Targeted U.S. Exports	Effective Date	Example Products Targeted
China	$3.0 billion	April 2, 2018	fruits vegetables, wine, meats, steel products, aluminum waste, and other items
India	$1.4 billion	June 21, 2018	nuts, apples, steel products, motorcycles, and other items
Turkey	$1.8 billion	June 21, 2018	foodstuffs, paper, plastic, structural steel, machinery, vehicles, and other items
European Union (EU) 1st Set	$3.2 billion	June 20, 2018	steel and aluminum products, bourbon whiskey, motorcycles, tobacco products, and pleasure boats, and other items
EU 2nd Set	$4.2 billion	3 years later	cranberries, denim jeans, footwear, washing machines, and other items
Canada	$13.5 billion	July 1, 2018	steel, aluminum, coffee, ketchup, orange juice, paper products and other consumer goods
Mexico	$3.7 billion[a]	June 5, 2018, for the majority of products, with remaining effective July 5, 2018	pork, apples, potatoes, bourbon and cheeses, and other items

Source: Global Trade Atlas, compiled from partner countries' 2017 import data for U.S. products; products targeted by retaliatory tariffs were identified in countries' World Trade Organization notifications (China (G/L/1218, March 29, 2018); India (G/L/1237/Rev 1, June 13, 2018); EU (G/L/1237; May 18, 2018); Turkey (G/L/1242, May 21, 2018)), and in the notices published by Canada and Mexico on their own government websites (Department of Finance (Canada). "Notice of intent to impose countermeasures action against the United States in response to tariffs on Canadian steel and aluminum products," May 31, 2018, https://www.fin.gc.ca/activty/consult/cacsap-cmpcaa-eng.asp; and Ministry of Finance (Mexico). *Diario Oficial de la Federacion*, June 5, 2018, http://www.dof.gob.mx/nota_detalle.php?codigo=5525036&fecha=05/06/2018

Notes: Under WTO rules on safeguards, countries facing new safeguard tariffs may impose their own retaliatory tariffs that would result in an equivalent amount of tariff collection. These retaliatory tariffs (which the WTO refers to as the suspension of trade concessions) must be delayed 3 years if the safeguard tariffs were a result of an absolute increase in imports. The EU retaliation list split into two lists is an example.

a. One commodity code listed on Mexico's notice is newly established and does not have any reported data for 2017; to estimate the amount of trade, CRS used the higher-level 6-digit version of the code (160100).

U.S. FTA partner countries may also claim that the increase in U.S. tariff rates violates U.S. FTA commitments and seek recourse through those agreements. For example, Canada and Mexico, U.S. partners in NAFTA, have claimed that the U.S. actions violate commitments in both NAFTA and the WTO agreements. Canada is launching a dispute under the FTA's dispute settlement provisions in addition to actions at the WTO, and will impose tariffs on up to $13.5 billion of U.S. exports of steel, aluminum, and other products, scheduled to go into effect in July.[50] Mexico

[50] "Canada Files Promised NAFTA, WTO Cases Challenging U.S. 232 Tariffs," *World Trade Online*, June 1, 2018; Canada Department of Finance, "Notice of intent to impose countermeasures action against the United States in response to tariffs on Canadian steel and aluminum products," May 31, 2018.

also published its list of retaliatory tariffs on agricultural and other products that are being implemented in stages, and would affect approximately $3.5 billion in U.S. exports.[51]

The prospect of escalating tariffs by U.S. trading partners in retaliation to the Section 232 tariff actions by the Trump Administration magnifies the potential effects of the Section 232 tariffs. From an economic perspective, retaliation increases the scope of industries affected by the tariffs. U.S. farmers, for example, have consistently voiced concern that agriculture exports are being targeted for retaliation and fear losing market share abroad if they are displaced by suppliers from other countries.[52] Some economic models also estimate that retaliation could significantly increase the potential drag on economic growth, while some show minimal impact.

Retaliatory actions may also heighten concerns over the potential strain the Section 232 tariffs place on the international trading system. Many U.S. trading partners view the Section 232 actions as protectionist and in violation of U.S. commitments at the WTO and in U.S. FTAs, while the Trump Administration views the actions within its rights under those same commitments.[53] If the dispute settlement process in those agreements cannot satisfactorily resolve this conflict, it could lead to further unilateral actions and a tit-for-tat process of increasing retaliation.

WTO Implications

The President's imposition of tariffs on certain imports of steel and aluminum products,[54] as well as Commerce's exemption of certain WTO Members' products from such tariffs, may have implications for the United States under WTO agreements. On April 9, 2018, China took the first step in challenging the executive branch's actions as violating U.S. obligations under the WTO agreements (particularly the Agreement on Safeguards) by requesting consultations with the United States.[55] Under WTO dispute settlement rules, Members must first attempt to settle their disputes through consultations. If these fail, the Member initiating a dispute may request the

[51] Anthony Harrup and Santiago Perez, "Mexico Details Its List of Retaliatory Tariffs Against U.S., Adds Bourbon," *Wall Street Journal*, June 5, 2018; "Decreto por el que se modifica la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación, el Decreto por el que se establece la Tasa Aplicable durante 2003, del Impuesto General de Importación, para las mercancías originarias de América del Norte y el Decreto por el que se establecen diversos Programas de Promoción Sectorial," Diario Oficial de la Federacion, May 6, 2018.

[52] Monica Davey and Patricia Cohen, "Trade War Prospect Shakes Part of Trump Base: Midwest Farmers," *New York Times*, March 10, 2018. For more information, see CRS Insight IN10880, *China's Retaliatory Tariffs on Selected U.S. Agricultural Products*, by Jenny Hopkinson.

[53] For example, see China, "United States – Certain Measures on Steel and Aluminum Products Request for Consultations by China," WTO WT/DS544/1, April 9, 2018; and United States, "Certain Measures on Steel and Aluminum Products," WTO WT/DS544/2, April 17, 2018.

[54] For legal background on the tariff measures, see CRS Legal Sidebar LSB10097, *UPDATE: Threats to National Security Foiled? A Wrap Up of New Tariffs on Steel and Aluminum*, by Caitlain Devereaux Lewis.

[55] Request for Consultations by China, *U.S.—Certain Measures on Steel and Aluminum Products*, WT/DS/544/1 (April 9, 2018) (hereinafter Request for Consultations). This report does not examine potential implications under other international agreements to which the United States is a party, such as other U.S. free trade agreements. Notably, the executive branch's actions are also subject to legal challenge in U.S. courts. On April 5, 2018, the United States Court of International Trade denied a motion for a preliminary injunction that sought to prevent the United States from collecting the import tariffs on certain steel products until the court ruled upon legal challenges to the tariffs. Order Denying Motion for Preliminary Injunction at 1-4, Severstal Export GMBH v. United States, No. 18-00057, 2018 WL 1705298 (Ct. of Int'l Trade April 5, 2018). The motion was made by a Swiss company and its U.S. affiliate, both wholly-owned subsidiaries of a Russian steel producer. *Id.*

establishment of a dispute settlement panel composed of trade experts to determine whether a country has violated WTO rules.[56]

In its request, China alleged that the U.S. tariff measures and exemptions are contrary to U.S. obligations under several provisions of the GATT, the foundational WTO agreement that sets forth binding international rules on international trade in goods.[57] In particular, China alleged that the measure violates GATT Article II, which generally prohibits members from imposing duties on imported goods in excess of upper limits to which they agreed in their Schedules of Concessions and Commitments.[58] It further alleged that Commerce's granting of exemptions from the import tariffs to some WTO Member countries, but not to China, violates GATT Article I, which obligates the United States to treat China's goods no less favorably than the goods of other WTO Members (i.e., most-favored-nation treatment).[59] China also maintained that the Section 232 tariff measures are "in substance" a safeguards measure intended to alleviate injury to a domestic industry from increased quantities of imported steel that competes with domestic steel, but that the United States did not make the proper findings and follow the proper procedures for imposing such a measure as required by the GATT and WTO Safeguards Agreement.[60]

WTO Cases Initiated Against the U.S. Section 232 Actions

As of June 22, 2018, multiple WTO Members have requested consultations with the United States pursuant to the dispute settlement provisions of the GATT, Dispute Settlement Understanding (DSU), and Agreement on Safeguards.

- On April 17, 2018, China requested consultations, alleging that the Section 232 Actions are inconsistent with various U.S. obligations under the Agreement on Safeguards and GATT. India, Russia, Thailand, the EU, and Hong Kong asked to join the consultations.

  On May 18, 2018, India requested consultations, alleging violations of the Agreement on Safeguards and GATT. The EU, Russia, China, Hong Kong, and Thailand asked to join the consultations.
- On June 1, 2018, the EU requested consultations, alleging violations of the Agreement on Safeguards, GATT, and WTO Agreement. Japan, China, Norway, India, Russia, Hong Kong, Canada, Thailand, Turkey, Indonesia, and Mexico asked to join the consultations.
- On June 1, 2018, Canada requested consultations, alleging violations of the Agreement on Safeguards, GATT, and WTO Agreement. Japan, China, Thailand, Norway, India, the EU, Russia, and Mexico asked to join the

[56] WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) arts. 3-6. A WTO Member may appeal a panel's report to the WTO Appellate Body. *Id.* art. 17(1). The text of the DSU and other WTO agreements discussed in this report are available at https://www.wto.org/english/docs_e/legal_e/final_e.htm.

[57] General Agreement on Tariffs and Trade 1994 (GATT) art. II.

[58] GATT Article II limits the charges that WTO Members can impose in connection with the import of products. It provides that a WTO Member shall not impose "ordinary customs duties" in excess of the bound tariff rates set forth in that Member's Schedule of Concessions. It also bars "other duties and charges of any kind imposed in connection with the importation" of products in excess of charges levied on the date of the tariff concession. A Member's schedule is a list of specific commitments as to tariffs and other trade barriers. *Goods Schedules: Members' Commitments*, WORLD TRADE ORG, https://www.wto.org/english/tratop_e/schedules_e/goods_schedules_e.htm. The GATT provides limited ways in which WTO Members may modify the bound tariff rates. *E.g.* GATT art. XXVIII (establishing procedures for negotiations among WTO Members on changes to a Member's bound tariff rates in its schedules).

[59] Request for Consultations at 2; GATT art. I:1 ("With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation . . . , and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation . . . any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."). China also alleged that the measures violate GATT Article X:3(a), arguing that the United States "failed to administer its laws, regulations, decisions, and rulings in relation to the measures at issue in a uniform, impartial and reasonable manner."

[60] Request for Consultations at 2.

consultations.

- On June 5, 2018, Mexico requested consultations, alleging violations of the Agreement on Safeguards, GATT, and WTO Agreement. Japan, China, Canada, Thailand, Russia, Norway, India, and the EU asked to join the consultations.

Source: CRS based on WTO filings.

The United States has invoked the so-called national security exception in GATT Article XXI in defense of the steel and aluminum tariffs. That article states, in relevant part, that the GATT[61] will not

> be construed . . . to prevent any [member country] from taking any action which it considers necessary for the protection of its essential security interests
>
> . . .
>
> (ii) relating to the traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment; [or]
>
> (iii) taken in time of war or other emergency in international relations. . .[62]

Historically, the United States has taken the position that this exception is self-judging—or, in other words, once a WTO Member has invoked the exception to justify a measure potentially inconsistent with its WTO obligations, a WTO panel may not proceed to the merits of the dispute and cannot evaluate whether the WTO Member's use of the exception is proper.[63] Though this exception has been invoked several times throughout the history of the WTO and its predecessor agreement, the GATT 1947, it has yet to be interpreted by a WTO dispute settlement panel.[64] Accordingly, there is little guidance as to: (1) whether a WTO panel would decide, as a threshold matter, that it had the authority to evaluate whether the United States' invocation of the exception was proper; and (2) how a panel might apply the national security exception, if invoked, in any dispute before the WTO involving the new steel and aluminum tariffs. In the past, however, WTO Members have expressed concern that overuse of the exception will undermine the world trading system because countries might enact a multitude of protectionist measures under the guise of national security.[65]

[61] As noted, China has also alleged that the United States' imposition of steel and aluminum tariffs violated the WTO Safeguards Agreement, which lacks an exception for national security interests. This report does not analyze whether the United States could invoke the GATT's national security exception to justify a violation of the Safeguards Agreement.

[62] GATT art. XXI.

[63] *See, e.g.*, Dispute Settlement Body, Minutes of Meeting Held in the Centre William Rappard on October 23, 2017, ¶ 4.9, WT/DSB/M/403 (February 20, 2018) (noting that a U.S. representative, in commenting on the United Arab Emirates' invocation of national security exceptions in a dispute with Qatar, had maintained that national security issues "were political and were not matters appropriate for adjudication in the WTO dispute settlement system."); GATT Panel Report, *United States—Trade Measures Affecting Nicaragua*, ¶ 1.2, L/6053 (October 13, 1986) (noting the United States' argument that the national security exception in the GATT "left it to each [GATT party] to judge what actions it considered necessary for the protection of its essential security interests" and that "[a] panel could therefore not address the validity of, nor the motivation for, the United States' invocation of [the exception]").

[64] *See, e.g.*, sources cited *supra* note 10.

[65] *See, e.g.*, WTO Council for Trade in Goods, *National Security Cited in Two Trade Concerns at Goods Council Meeting*, WORLD TRADE ORG., https://www.wto.org/english/news_e/news17_e/good_10jul17_e.htm (June 30, 2017) (discussing potential systemic risks to the world trading system from overuse of the national security exception).

If the dispute over steel and aluminum tariffs proceeds to a WTO panel, and the panel renders an adverse decision against the United States, the United States would be expected to remove the tariffs, generally within a reasonable period of time, or face the possibility of paying compensation to the complaining Member or being subject to sanctions.[66] Such sanctions might include the complaining Member imposing higher duties on imports of selected products from the United States.[67] However, China has already begun imposing its own duties on selected U.S. exports without awaiting the outcome of a dispute settlement proceeding,[68] perhaps because it often takes years before the WTO's Dispute Settlement Body authorizes a prevailing WTO Member to retaliate.[69] In turn, the United States has argued that China's unilateral imposition of tariffs in response to the U.S. Section 232 measures cannot be justified under WTO rules.[70]

International Efforts to Address Overcapacity

OECD analysis has found that ongoing global steel overcapacity and excess production has been largely caused by government intervention, subsidization, and other market-distorting practices, although these are not the only factors.[71] Other reasons for excess capacity include cyclical market downturns. The situation is similar in the aluminum industry, where government financial support for large aluminum stockpiles has delayed the response to lower demand.

Past Administrations have worked to address the issue of steel overcapacity. President George W. Bush, for example, initiated international discussions on global capacity reduction and improved trade discipline in the steel industry as part of his general steel announcement of 2001.[72] Other

[66] DSU arts. 21-22. Members whose measures are deemed inconsistent with its WTO obligations and unjustified under one of the GATT exceptions are expected to implement the panel and/or Appellate Body's report. *Id.* art. 21.3. That is, the defending Member must withdraw, modify, or replace its inconsistent measures. *See id.* If a disagreement arises as to whether the defending Member has, in fact, implemented the report, a WTO panel may be convened to hear the dispute over compliance. *Id.* art. 21.5. The WTO Appellate Body hears appeals of these compliance panel reports. *Id.* art. 17.1.

[67] *See id.* art. 22.3. Ultimately, when a defending Member fails to implement a panel or Appellate Body report within the established compliance period, the prevailing Member may request that the defending Member negotiate a compensation agreement. *Id.* art. 22.2. If such negotiations are not requested or if an agreement is not reached, the prevailing Member may also request authorization to impose certain trade sanctions against the noncomplying Member. *Id.* art. 22.2-22.3. Specifically, the WTO may authorize the prevailing Member to suspend tariff concessions or other trade obligations that it otherwise owes the noncomplying Member under a WTO agreement. *Id.*

[68] Charles Hutzler, *China Retaliates Against Trump Tariffs with Duties on American Meat and Fruit*, WALL STREET J. (April 1, 2018), https://www.wsj.com/articles/china-retaliates-with-new-tariffs-on-u-s-meat-and-other-products-1522618533.

[69] *Evaluation of the WTO Dispute Settlement System: Results to Date*, WORLD TRADE ORG., https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c12s3p1_e.htm ("[D]espite the deadlines, a full dispute settlement procedure still takes a considerable amount of time, during which the complainant suffers continued economic harm if the challenged measure is indeed (WTO)-inconsistent. No provisional measures (interim relief) are available to protect the economic and trade interests of the successful complainant during the dispute settlement procedure. Moreover, even after prevailing in dispute settlement, a successful complainant will receive no compensation for the harm suffered during the time given to the respondent to implement the ruling.").

[70] Committee on Safeguards, Imposition of a Safeguard Measure by the United States on Imports of Aluminum and Steel: Communication from the United States in Response to China's Requests Circulated on 26 March 2018, 1-2, G/SG/161/Suppl.1 (April 4, 2018) ("Because the actions under the Steel and Aluminum Proclamations are not safeguard measures, the United States considers that Article 8.2 of the *Agreement on Safeguards* does not justify China's suspension of concessions or other obligations. China has asserted no other justification for its measures, and the United States is aware of none. Therefore, it appears that China's actions have no basis under WTO rules.").

[71] OECD, "Excess Capacity in the Global Steel Industry: The Current Situation and Ways Forward," 2015, p. 4, https://www.oecd.org/sti/ind/excess-capacity-in-the-global-steel-industry.pdf.

[72] President George W. Bush, Statement by the President Regarding a Multilateral Initiative on Steel, June 5, 2001, (continued...)

governments agreed to join the Bush Administration in discussing overcapacity and trade issues at the OECD in a process that started in mid-2001. The industrial, steel-producing members of the OECD were joined by major non-OECD steel producers, such as India, Russia, and, during later stages of the talks, China. Negotiations were suspended indefinitely in 2004, and by 2005, the OECD had abandoned its efforts to negotiate an agreement among all major steel-producing countries to ban domestic subsidies for steel mills.

The Obama Administration also participated in international efforts to curb steel imports, including the launch of the G-20 Global Forum on Steel Excess Capacity in 2016, another venue that sought to address the challenges of excess capacity in steel worldwide.[73] In December 2016, the G-20 convened its first meeting of more than 30 economies—all G-20 members plus interested OECD members—as a global platform to discuss steel issues among the world's major producers.[74] The same year, as part of the U.S.-China Strategic and Economic Dialogue (SE&D) established in 2009, the Obama Administration agreed to address excess steel production and also to communicate and exchange information on surplus production in the aluminum sector.[75]

In November 2017, the OECD Forum published a report with policy recommendations to address excess capacity. The recommendations include: enhance markets by fostering a level playing field, refrain from market-distorting subsidies and support measures, encourage adjustment and capacity reduction, and share data on policies and trends. At a March 2018 Forum meeting, members discussed increasing transparency of domestic production and other policies, but did not agree on specific actions. Without specific actions, however, it is unclear if the Forum can achieve its goal of reducing overcapacity.

In addition to the Section 232 action, the Trump Administration is pursuing joint action on industrial overcapacity. The United States Trade Representative, Ambassador Lighthizer, met with his EU and Japanese counterparts in Paris in May 2018, and the three countries agreed to concrete steps to address "nonmarket-oriented policies and practices that lead to severe overcapacity, create unfair competitive conditions for our workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade."[76] The Ministers agreed to work towards negotiation of new international rules on subsidies and state-owned enterprises and improved compliance with WTO transparency commitments.[77] The parties also agreed to cooperate on their concerns with third parties' technology transfer policies and practices[78] and issued a joint statement containing a list of factors

(...continued)

https://georgewbush-whitehouse.archives.gov/news/releases/2001/06/20010605-4.html.

[73] The White House, Fact Sheet: The 2016 G-20 Summit in Hangzhou, China, September 5, 2016, https://obamawhitehouse.archives.gov/the-press-office/2016/09/05/fact-sheet-2016-g-20-summit-hangzhou-china.

[74] European Commission, *Steel: Commission Welcomes New Global Forum to Tackle Root Causes of Overcapacity*, December 16, 2016, europa.eu/rapid/press-release_IP-16-4435_en.pdf.

[75] U.S. Department of the Treasury, 2016 U.S.-China Strategic and Economic Dialogue U.S.-Fact Sheet, June 7, 2016, https://www.treasury.gov/press-center/press-releases/Pages/jl0485.aspx.

[76] U.S. Trade Representative, "Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union," May 2018.

[77] Ibid, Annex Statement 1, EU-Japan-US scoping paper to define the basis for the development of stronger rules on industrial subsidies.

[78] Ibid, Annex Statement 2, Joint Statement on Technology Transfer Policies and Practices.

that identify if market conditions for competition exist.[79] U.S. unilateral actions, however, may limit other countries' willingness to participate in multilateral forums.[80]

Potential Economic Impact

The Section 232 tariffs have begun to affect various stakeholders in the U.S. economy, prompting reactions from several Members of Congress, some in support and others voicing concern. On April 12, 2018, the House Ways and Means Committee held a hearing examining the potential economic implications of the tariffs, and on June 20, 2018, the Senate Finance Committee held a hearing with Commerce Secretary Ross to discuss the Administration's Section 232 investigations.[81] The Section 232 actions were also discussed during the Senate Finance Subcommittee on International Trade, Customs, and Global Competitiveness hearing on China.[82] In general, the tariffs are expected to benefit the domestic steel and aluminum producers, leading to potential higher steel and aluminum prices and expansion in production in those sectors, while potentially negatively affecting consumers and downstream domestic industries (e.g., manufacturing and construction) due to higher costs of input materials. In addition, retaliatory tariffs by other countries may impact U.S. exports, magnifying the negative impact of the Section 232 tariffs as noted earlier.

Economic Dynamics of the Tariff Increase

Changes in tariffs affect economic activity directly by influencing the price of imported goods and indirectly through changes in exchange rates and real incomes. The extent of the price change and its impact on trade flows, employment, and production in the United States and abroad depend on resource constraints and how various economic actors (foreign producers of the goods subject to the tariffs, producers of domestic substitutes, producers in downstream industries, and consumers) respond as the effects of the increased tariffs reverberate throughout the economy. The following outcomes are expected at the level of individual firms and consumers:

- **The price of the imported steel and aluminum products is likely to increase.** The magnitude of the price increase will depend on a number of factors. The extent of country exemptions and product exclusions will determine the scope of imports affected. Meanwhile, the ability of foreign producers to lower their own prices and absorb a portion of the tariff increase will determine the extent the tariffs are "passed through" to downstream industries and consumers.

  U.S. firms have begun paying increased prices for steel and aluminum purchased from abroad. For example, CP Industries, a maker of steel cylinders based in McKeesport, Pennsylvania, has begun paying tariffs on imports of certain Chinese steel pipes it asserts cannot be produced in sufficient quantity in the

[79] Ibid, Annex Statement 3, Joint Statement on Market Oriented Conditions.

[80] The U.S. Aluminum Association and some of its international counterparts seek to establish a similar global forum to address aluminum excess capacity.

[81] A webcast of the hearings and links to witness testimony are available at https://waysandmeans.house.gov/event/hearing-effects-tariff-increases-u-s-economy-jobs/ and https://www.finance.senate.gov/hearings/current-and-proposed-tariff-actions-administered-by-the-department-of-commerce.

[82] A webcast of the hearing and links to witness testimony are available at https://www.finance.senate.gov/hearings/market-access-challenges-in-china.

United States to meet its demands.[83] The company claims this raises the costs of its production by roughly 10%. The higher input costs potentially give foreign competitors an advantage in the U.S. market and abroad.

- **Demand for the imported goods facing the tariffs is likely to decrease, while demand for those goods produced domestically or imported from countries excluded from the tariff is likely to increase.** Consumers and downstream firms' sensitivity to the price increase (their price elasticity of demand) will depend in large part on the degree to which the steel and aluminum products produced domestically, or imported from exempted countries, are sufficient substitutes for the products facing the tariffs.
- **The price and output of steel and aluminum produced domestically or imported from countries exempted from the tariffs are likely to increase.** As consumers of the products facing the tariffs shift their demand to lower- or zero-tariff substitutes, domestic producers are likely to respond with a combination of increased output and prices.[84] Resource constraints that may limit or slow an expansion of output could cause prices to increase more rapidly. The low U.S. unemployment rate suggests such constraints may include frictions in shifting labor from other domestic industries into steel and aluminum production.[85] In addition to reacting to higher cost production and supply constraints, domestic steel and aluminum producers may also increase prices simply as a strategic response to the higher prices charged by their foreign competitors subject to the tariffs.[86]

  In an anticipation of higher domestic demand and the ability to charge higher prices on U.S. steel and aluminum, some producers have announced investment and production increases. For example, U.S. Steel Corporation has announced plans to reopen two blast furnaces in Granite City, Illinois, and Century Aluminum has stated its intent to increase production at a facility in Kentucky.[87] Additional shifts in U.S. production are likely once the effects of the tariffs on U.S. market conditions become clear.
- **Input costs for downstream domestic producers are likely to increase.** As prices likely rise in the United States for the goods subject to the tariffs, domestic industries that use steel and aluminum in their products ("downstream" industries, such as auto manufacturers and oil producers) will face higher input costs. Higher input costs for downstream domestic producers are likely to lead to some combination of lower profits for producers and higher prices for consumers, which in turn, could dampen demand for downstream products and

[83] Eduardo Porter, "'How Long Can We Last?' Trump's Tariffs Hit Home in the U.S.," *New York Times*, April 10, 2018.

[84] Foreign producers from countries exempt from the tariffs would also be expected to respond to increased demand with a combination of increased prices and output, but they will be limited in their ability to expand output due to the quotas imposed in lieu of the tariffs. Foreign producers, therefore, are expected to respond to any demand spikes with price increases.

[85] Dom Yanchunas, "U.S. Line Pipe Prices Jump on Section 232 Supply Fears," *Metal Bulletin*, May 29, 2018.

[86] Mary Amiti, Sebastian Heise, and Noah Kwicklis, "Will New Steel Tariffs Protect U.S. Jobs?," Federal Reserve Bank of New York, *Liberty Street Economics (blog)*, April 19, 2018, http://libertystreeteconomics.newyorkfed.org/2018/04/will-new-steel-tariffs-protect-us-jobs.html.

[87] Len Boselovic, "U.S. Steel Restarting Second Blast Furnace," *Pittsburgh Post-Gazette*, June 5, 2018; Bob Tita and Andrew Tangel, "Some Steel and Aluminum Makers to Restart Plant Operations Amid Tariff Plans," *Wall Street Journal*, March 7, 2018.

result in a reduction of output in these sectors, and possibly employment declines. For example, press reports state that Mid Continent Nail Corporation of Missouri, a manufacturer reliant on imported steel wire, could be forced to shut down operations, including 500 manufacturing jobs, as a result of the tariffs.[88]

- **Industries unrelated to steel and aluminum could face negative consequences due to retaliation by the countries facing the Section 232 tariffs as well as a general slowdown in trade volumes.** Canada, China, Mexico, and the EU, the four largest U.S. export markets, have now imposed or stated their intent to impose retaliatory tariffs on U.S. exports, including many U.S. agricultural goods. The retaliatory tariffs would be expected to decrease demand for U.S. exports and would give U.S. exporters an incentive to manufacture abroad to avoid the tariffs. For example, Harley Davidson has announced its intent to shift some of its production out of the United States in order to remain competitive in the EU market.[89]

  Workers and firms involved in the shipping and transportation industries could also face downward pressure on demand if trade slows. For example, the Northwest Seaport Alliance (NWSA) representing the ports of Tacoma and Seattle estimates that approximately $8 billion in annual trade through their ports will be affected by U.S. Section 232 tariffs and corresponding foreign retaliatory tariffs.[90] If the tariffs reduce trade volumes, as economic models would generally suggest, this could reduce employment in the shipping and transportation industries.

Aggregating these microeconomic effects, tariffs also have the potential to affect macroeconomic variables, although these impacts may be limited in the case of the Section 232 tariffs, given their focus on two specific commodities with potential exemptions, relative to the size of the U.S. economy. With regard to the value of the U.S. dollar, as demand for foreign goods potentially falls in response to the tariff, U.S. demand for foreign currency may also fall, putting upward pressure on the relative exchange value of the dollar. Tariffs may also affect national consumption patterns, depending on how the shift to higher cost domestic substitutes affects consumers' discretionary income and therefore aggregate demand. Finally, given their ad hoc nature, these tariffs, in particular, are also likely to increase uncertainty in the U.S. business environment potentially placing a drag on investment.

Assessing the Overall Economic Impact

From a global standpoint, tariff increases on steel and aluminum are likely to result in an unambiguous welfare loss due to what most economists consider is a misallocation of resources caused by shifting production from lower-cost to higher-cost producers. On the other hand, some see the Administration's trade actions as addressing long-standing issues of fairness that are intended to provide U.S. producers with a more level playing field. Looking solely at the domestic economy, the net welfare effect is unclear, but also likely negative. Generally, economic models would suggest the negative impact of higher prices on consumers and industries using the

[88] Alisa Nelson, "Trump Tariffs Blamed for Potential Closure of Major Southeast Missouri Employer," *Missourinet*, June 20, 2018.

[89] "U.S. Trade War with Europe Revs Up as Harley-Davidson Shifts Production," *Financial Times*, June 25, 2018.

[90] Testimony of Northwest Seaport Alliance CEO John Wolfe, in U.S. Congress, House Committee on Ways and Means, *Effects of Tariff Increases on the U.S. Economy and Jobs*, April 12, 2018, testimony.

imported goods is likely to outweigh the benefit of higher profits and expanded production in the import-competing industry and the additional government revenue generated by the tariff. It is theoretically plausible to generate an overall positive welfare effect for the domestic economy if the foreign producers absorb a large enough portion of the tariff increase. Given the current excess capacity and intense price competition in the global steel and aluminum industries, however, this level of tariff absorption by foreign firms seems unlikely. Moreover, retaliation by foreign governments would erode this welfare gain.

The direct economic effects of the Section 232 tariffs may be limited due to the relatively small share of economic activity directly affected. The recent extension of the steel and aluminum tariffs to U.S. imports from Canada, Mexico, and the EU, is economically significant as these trading partners accounted for nearly 50% of U.S. imports of both products by value in 2017. However, these products still represent a relatively small share of total U.S. imports: in 2017 U.S. steel and aluminum imports were $29 billion and $17 billion, respectively, roughly 2% of all U.S. imports. Various stakeholder groups have prepared quantitative estimates of the costs and benefits across the economy. Specific estimates from these studies should be interpreted with caution given their sensitivity to modeling assumptions and techniques, but generally they suggest a small negative overall effect on U.S. gross domestic product (GDP) from the tariffs with employment shifts into the domestic steel and aluminum industries and away from other sectors in the economy.[91]

Ultimately the economic significance of the tariffs will largely depend on variables that remain in flux: the range of product exclusions, further negotiations on country exemptions, and the degree to which other countries retaliate. A range of U.S. stakeholders have objected to the Administration extending the tariffs to Canada, Mexico, and the EU, and the Administration states that negotiations remain ongoing, suggesting the possibility of future adjustments to the tariff coverage. Meanwhile, more than 22,000 product exclusions have been filed, which if granted would limit the economic impact of the trade measures. Finally, retaliation has an immediate negative economic impact on the industries subject to retaliatory tariffs, and could set off a tit-for-tat process of increasing global protectionism, reducing trade, and causing significant growth declines. For example, analysis by the Federal Reserve Bank of Dallas estimates that an extreme scenario of prohibitively high retaliatory tariffs affecting all U.S.-China and U.S.-EU goods trade could result in a reduction of U.S. GDP by 3.5%.[92]

Section 232 Auto Investigation

As mentioned, subsequent to the steel and aluminum investigations, the Trump Administration initiated a third Section 232 investigation into the imports of automobiles, including SUVs, vans and light trucks, and automotive parts. The Commerce Department is currently accepting comments from stakeholders on the impact of these imports on national security, identifying a

[91] For an example of two modeling studies with contrasting results, see Joseph Francois and Laura M. Baughman, *Trading Partners Respond: The Estimated Impacts of Tariffs on Steel and Aluminum*, Trade Partnership Worldwide, March 13, 2018, http://tradepartnership.com/wp-content/uploads/2018/03/232RetaliationPolicyBrief.pdf; and Jeff Ferry, *Steel and Aluminum Tariffs Produce Minimal Impact on Jobs, GDP: CPA Economic Model Refutes Alarmist Trade Partnership Study*, Coalition for a Prosperous America, March 20, 2018, https://d3n8a8pro7vhmx.cloudfront.net/prosperousamerica/pages/4216/attachments/original/1521555989/180320_study_Ferry_232_tariffs1.pdf.

[92] Michael Sposi and Kelvinder Virdi, *Steeling the U.S. Economy for the Impacts of Tariffs*, Federal Reserve Bank of Dallas, Economic Letter Vol. 13, No. 5, April 2018, https://www.dallasfed.org/~/media/documents/research/eclett/2018/el1805.pdf.

broad set of factors related to national defense and the national economy for consideration.[93] As many foreign auto manufacturers have established facilities in the United States, Commerce specifically requested information on how the impact may differ when accounting for "U.S. production by majority U.S.-owned firms is considered separately from U.S. production by majority foreign-owned firms."

The value of U.S. imports potentially covered under the new investigation is significantly greater than that of steel and aluminum imports. With a complex global supply chain, industry dynamics such as the existence of foreign-owned auto manufacturing facilities in the United States, and the potential for further retaliation by trading partners if tariffs are imposed as a result of the investigation, the economic consequences could be substantial.[94] According to Ford Motor Co.'s executive vice president and president of global operations, Joe Hinrichs, "the auto industry is a global business. The benefits of scale and global reach are important ... The big companies that we compete against — Toyota, Volkswagen, General Motors, Nissan, Hyundai, Kia — are all global in nature because we realize the benefits of sharing the engineering, the platforms and the scale and our supply base."[95]

Some Members and auto industry representatives have spoken out in opposition to the new Section 232 investigation. The National Association of Manufacturers, for example, raised concerns of potential "unintended consequences for U.S. manufacturing workers that will limit the chance for Americans to win"[96] while others have opined that the investigation is a tactical move by the Administration to pressure trade negotiating partners.[97]

Issues for Congress

As Congress debates the Administration's Section 232 actions it may wish to consider the following issues, many of which include potential legislative responses.

Appropriate Delegation of Constitutional Authority

In establishing Section 232 of the Trade Expansion Act, Congress delegated aspects of its authority to regulate international commerce to the Administration. Use of the statute to restrict imports does not require any formal approval by Congress or an affirmative finding by an independent agency, such as the U.S. International Trade Commission, granting the President broad discretion in applying this authority. Should Congress disapprove of the President's use of the statute, its current recourse is limited to passing new legislation or using informal tools to pressure the Administration (e.g., putting holds on presidential nominee confirmations). Some Members and observers have suggested that Congress should require additional steps in the Section 232 process, such as requiring an economic impact study by the U.S. International Trade Commission, congressional consultation or approval of any new tariffs (see, for example, S. 3013), or allowing for a resolution of disapproval as exists in the case of petroleum. In addition, some Members and observers have suggested that Congress should revisit the delegation of its

[93] U.S. Department of Commerce, "Notice on Section 232 National Investigation of Imports of Automobiles and Automotive Parts," 83 *Federal Register* 24735-24737, May 30, 2018.

[94] To illustrate the complexity of auto negotiations, see CRS In Focus IF10835, *NAFTA Motor Vehicle Talks Reopen Old Trade Debate*, by Bill Canis.

[95] Doug Palmer, "Trump's Trade Moves Challenge Ford's Global Focus," *PoliticoPro*, June 20, 2018.

[96] Michael Short, "NAM Statement on Section 232 Investigation into Auto Imports," May 24, 2018.

[97] U.S. Chamber of Commerce, "U.S. Chamber Statement on Potential Auto Tariffs," May 24, 2018.

constitutional authority more broadly, such as by requiring congressional review of executive branch trade actions generally (see, for example, H.R. 5760 and S. 177).

Interpreting National Security

Congress created the Section 232 process to ensure that U.S. imports do not cause undue harm to U.S. national security. Some observers have raised concerns that restrictions on U.S. imports under Section 232, however, may harm U.S. allies, which could also have negative implications for U.S. national security. For example, Canada is considered part of the U.S. defense industrial base according to U.S. law and is also a top source of U.S. imports of steel and aluminum.[98]

National security is not clearly defined in the statute, allowing for ambiguity and alternative interpretations by an Administration. International trade commitments both at the multilateral and FTA level generally include broad exceptions on the basis of national security. The Trump Administration argues its Section 232 actions are permissible under these exceptions, while many U.S. trading partners claim the actions are unrelated to national security. If the United States invokes the national security exemption in what may be perceived to be an arbitrary way, it could similarly encourage others countries to use national security as a rationale to enact protectionist measures and limit the scope of potential U.S. responses to such actions.

Congress may consider amending Section 232 to address these concerns. For example, Congress could more explicitly define "national security" and the factors to be considered in a Section 232 investigation. Alternatively, Congress could consider an amendment to Section 232 similar to the option for congressional disapproval for Section 232 actions related to oil or petroleum.

Establishing New International Rules

Addressing the specific market-distorting practices that are the root causes of steel and aluminum overcapacity (e.g., government intervention, subsidization) may require updating or amending existing agreements. Negotiations for new multilateral rules, which attempt to address some of these issues, have stalled.[99] Recent U.S. FTA negotiations, including the negotiations on revisions to NAFTA have included related disciplines (e.g., by establishing rules on state-owned enterprises or anti-corruption), but the United States is not currently engaged in an FTA negotiation with China or other key countries driving overcapacity. To address these issues, Congress could consider establishing specific or enhanced new negotiating objectives for trade agreement negotiations, potentially through new or modified Trade Promotion Authority (TPA) legislation. Congress could also consider directing the executive branch to prioritize engagement in such negotiations, by, for example, endorsing the current trilateral negotiations announced by USTR with the EU and Japan to address nonmarket practices, including subsidies, state-owned enterprises, and technology transfer requirements, mostly aimed at China.

Effects on Trade Liberalization Efforts

Some argue that the U.S. unilateral tariff actions could limit other countries' interest in engaging in negotiations to reduce international barriers—efforts historically championed by the United States. Such concerns are amplified given the proliferation of trade liberalization agreements outside the context of the WTO and therefore with the potential for discriminatory effects on

[98] 10 U.S.C. §148.

[99] For more information, see CRS In Focus IF10002, *The World Trade Organization*, by Ian F. Fergusson and Rachel F. Fefer.

countries not participating, including the United States.[100] To address this concern, Congress could investigate, or ask the U.S. International Trade Commission to investigate, the potential strategic and economic value to the United States of engaging in negotiations to join existing or establish new trade agreements.

Impact on the Multilateral Trading System

Some analysts argue that the United States risks undermining the international system it helped create when it invokes unilateral trade actions that may violate core commitments and with regard to broad use of national security exemptions. These observers fear that disagreements at the WTO on these issues may be difficult to resolve through the existing dispute settlement procedures given the concerns over national sovereignty that would likely be raised if a WTO dispute settlement panel issued a ruling relating to national security. Furthermore, actions by the United States that do not make use of the multilateral system's dispute settlement process may open the United States to criticism and could impede U.S. efforts to use the multilateral system for its own enforcement purposes. For example, China recently called on other parties such as the EU to join it in opposition to the U.S. actions on Section 232, while simultaneously promoting domestic policies often seen as undermining WTO rules.[101] Congress could potentially address these concerns by conducting increasing oversight of the Trump Administration's actions by holding hearings to hear from multiple parties and also, consider legislation to establish more stringent criteria or requiring congressional approval of any use of Section 232, among other possible actions.

Impact on Broader International Relationships

The U.S. unilateral actions under Section 232 have raised the level of tension with U.S. trading partners and could pose risks to broader international economic cooperation. For example, trade tensions between the United States and its traditional allies contributed to the lack of consensus at the conclusion of the recent G-7 summit in June 2018.[102] The strain on international trading relationships also could have broader policy implications, including for cooperation between the United States and allies on foreign policy issues.

[100] For more information, see CRS Report R45198, *Bilateral and Regional Trade Agreements: Issues for Congress*, by Brock R. Williams.

[101] Lyubov Pronina, "China Seeks EU's Support in Standing Up to U.S. Trade Threat," *Bloomberg BNA,* April 9, 2018. For more information on U.S.-China trade, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[102] For more information, see CRS Insight IN10919, *The G-7 Summit in Charlevoix, Canada: Changing U.S. Leadership in Global Forums*, by Rebecca M. Nelson.

Appendix A. Amendments to and Past Uses of Section 232 (19 U.S.C. §1862)

Concern over national security, trade, and domestic industry was first raised by the Trade Agreements Extension Act of 1954 (P.L. 83-464 §2). The 1954 Act prohibited the President from decreasing duties on any article if the President determined that such a reduction might threaten domestic production needed for national defense.[103] The Trade Agreements Extension Act of 1958 (P.L. 85-686 §8) built on these provisions, by outlining the process for starting an investigation and the factors to be considered during an investigation.[104] Section 232 of the Trade Expansion Act of 1962 (P.L. 87-794) continued the provisions of the 1958 Act, and has been amended multiple times over the years, including: 1) to change the time limits for investigations and actions; 2) to change the advisory responsibility from the Secretary of the Treasury to the Secretary of Commerce; and 3) to limit presidential authority to adjust oil imports.[105]

In 1980, Congress amended Section 232 to create a joint disapproval resolution provision under which Congress could override presidential actions to adjust petroleum or petroleum product imports.[106] The bill was signed into law on April 2, 1980, the same day that President Carter declared a license fee on crude oil and gasoline, pursuant to Section 232.[107]

On April 15 1980, two weeks after the President's proclamation on the crude oil and gasoline license fee, Representative James Shannon introduced House Joint Resolution 531 to disapprove and effectively nullify the presidential action.[108] The House Ways and Means Subcommittee on Trade voted 14 to 4 to disapprove the presidential action; the resolution was favorably reported out of the full committee on a 27 to 7 vote. Dissenting views were voiced by members who supported the fee program and were concerned about U.S. dependence on foreign oil.

President Carter's Section 232 action to impose a license fee on crude oil and gasoline was ruled illegal by a U.S. District Court,[109] and the Carter Administration appealed the decision. The committee vote aimed to end the judicial uncertainty. While the measure passed the House, it was indefinitely postponed in the Senate.[110] Multiple joint resolutions of disapproval were introduced in Congress in 1980, but none passed both chambers.

[103] P.L. 83-464, §2.

[104] P.L. 85-686, §8.

[105] The Trade Act of 1974 (P.L. 93-618, §127(d)) changed the responsibility to advise the President from the Director of Office of Emergency Preparedness to the Secretary of the Treasury with requirements to consult with the Secretaries of Defense, Commerce, and other appropriate departments and agencies. The 1974 Act also placed a one-year time limit on the investigation. The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, §402) changed the advisory responsibility from the Secretary of the Treasury to the Secretary of Commerce, reduced the investigation timeline from one year to 270 days and created the 15-day implementation period for the President to act.

[106] P.L. 96-223, §402, the Crude Oil Windfall Profit Tax Act of 1980.

[107] Presidential Proclamation 4744, "Petroleum Import Adjustment Program", *Federal Register* volume 45, No. 66, April 3, 1980.

[108] U.S. Congress, House Committee on Ways and Means, Disapproval of Presidential Oil Import Fee, report to accompany H.J.Res 531, 96th Cong., 2nd sess., May 20, 1980, H.Rept. 96-1061.

[109] Indep. Gasoline Marketers Council, Inc. v. Duncan, 492 F. Supp. 614 (D.D.C. 1980).

[110] H.J.Res 531.

Appendix B. Section 232 Investigations

Table B-1. Section 232 Investigations and Presidential Actions, 1962-2018

	Subject of Investigation	Year Initiated	Initiator	Commerce Determination	Presidential Action
1	Manganese and chromium ferroalloys	1963	Manufacturing Chemists Association, Inc.	Negative	-
2	Tungsten mill products	1964	General Electric Company (Co.)	Negative	-
3	Antifriction bearings	1964	Anti-Friction Bearing Manufacturers Association	Terminated at request of petitioner	-
4	Watches, watch movements and parts	1965	Presidential Request	Negative	-
5	Manganese, silicon and chromium ferroalloys and refined metals	1968	Committee of Producers of Ferroalloys and Related Products	Negative	-
6	Miniature and instrument precision ball bearings	1969	Anti-Friction Bearing Manufacturers Association	Negative	-
7	Extra high voltage power circuit breakers, transformers, and reactors	1972	General Electric Co.	Negative	-
8	Petroleum	1973	Chairman of the Oil Policy Committee	Positive	Transitioned away from existing quota system to a license fee (Proclamation 4210, 38 FR 9645)
9	Petroleum	1975	Secretary of the Treasury	Positive	Added supplemental fee to the license fee (Proclamation 4341); fee was later reduced to zero (Proclamation 4655)
10	Iron and steel nuts, bolts, large screws	1978	Presidential Directive	Negative	-
11	Petroleum	1978	Secretary of the Treasury	Positive	Conservation fee added, but found to be illegal and blocked by District Court in 492 F. Supp. 614

	Subject of Investigation	Year Initiated	Initiator	Commerce Determination	Presidential Action
12	Petroleum from Iran	1979	Secretary of the Treasury	Positive	Embargo imposed on petroleum from Iran on Nov. 12, 1979 (Proclamation 4702)
13	Glass-lined chemical processing equipment	1981	Ceramic Coating Co.	Negative	-
14	Manganese, silicon and chromium ferroalloys and related metals	1981	Ferroalloys Association	Negative	-
15	Iron and steel nuts, bolts, large screws	1982	Secretary of Defense	Negative	-
16	Petroleum from Libya	1982	Presidential Request	Positive	Embargo imposed on petroleum from Libya on Mar. 10 1982 (Proclamation 4907)
17	Metal-cutting and Metal Forming Machine Tools	1983	National Machine Tool Builders' Association	Positive	Sought a voluntary restraint agreement with leading foreign suppliers and developed a domestic plan of programs to help revitalize the industry.[a]
18	Antifriction bearings	1987	Anti-Friction Bearing Manufacturers Association	Negative	-
19	Petroleum	1987	National Energy Security Committee (an industry group)	Positive	No action taken[b]
20	Plastic injection molding machinery	1988	Society of the Plastic Industry, Inc.	Negative	-
21	Uranium	1989	Secretary of Energy	Negative	-
22	Gears and gearing products	1991	American Gear Manufacturers Association	Negative	-
23	Ceramic Semiconductor Packaging	1992	Coors Electronic Package Co. and Ceramic Process Systems Corporation	Negative	-
24	Crude Oil and Petroleum Products	1994	Independent Petroleum Association of America	Positive	No action taken[b]

	Subject of Investigation	Year Initiated	Initiator	Commerce Determination	Presidential Action
25	Crude Oil	1999	Secretary of Commerce	Positive	No action taken[b]
26	Iron ore and finished steel	2001	Representatives James Oberstar and Bart Stupak	Negative	-
27	Steel	2017	Secretary of Commerce	Positive	Imposed tariffs of 25% on steel imports, from all countries, with an initial exception for Canada and Mexico, with other potential future exceptions[c]
28	Aluminum	2017	Secretary of Commerce	Positive	Imposed tariffs of 10% on aluminum imports, from all countries, with an initial exception for Canada and Mexico, with other potential future exceptions[d]
29	Automobiles, including SUVs, vans and light trucks, and automotive parts	2018	Secretary of Commerce	In Process	

Source: CRS compiled from the Bureau of Industry and Security's "Section 232 Investigations Program Guide," June 2007, available at: https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/86-section-232-booklet/file, and other Department of Commerce sources.

a. For the announcement of the action, see, U.S. President (R. Reagan), "Statement on the Machine Tool Industry," May 20, 1986. For an announcement of the voluntary restraint agreements with Japan and Taiwan, see "Statement on the Revitalization of the Machine Tool Industry," December 16, 1986. The agreement was modified in 1991 and extended through December 1993, (see: U.S. President (G. H.W. Bush), "Statement by Press Secretary Fitzwater on Extension of Machine Tool Voluntary Restraint Agreements With Japan and Taiwan," December 27, 1991.)

b. In the 1987, 1994, and 1999 investigations into petroleum and crude oil, the Commerce Department determined that certain oil imports threatened to impair national security but did not recommend that the President use his authority to adjust imports. In not acting, the President followed the Commerce recommendation in these three investigations. In the 1989 report, Commerce did not recommend that the President adjust imports using quotas, fees, or tariffs under the authority of Section 232 because any such actions would not be "cost beneficial and, in the long run, impair rather than enhance national security." In the 1994 and 1999 investigations into oil imports, Commerce found that existing government programs and activities related to energy security were more appropriate and cost effective than import adjustments. (Also see Department of Commerce, "The Effect of Crude Oil and Refined Petroleum Product Imports on the National Security," January 1989, https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/78-crude-oil-and-petroleum-products-1989/file.)

c. Presidential Proclamation 9705, "Presidential Proclamation on Adjusting Imports of Steel into the United States," March 8, 2018, (83 FR 11625).

d. Presidential Proclamation 9704, "Presidential Proclamation on Adjusting Imports of Aluminum into the United States," March 8, 2018, (83 FR 11619).

Appendix C. 2017 U.S. Steel and Aluminum Imports

Table C-1. Top U.S. Import Suppliers of Products Covered under Section 232 Proclamations

Steel			Aluminum		
Trading Partner	**Import Value (million U.S. $s)**	**Import Share**	**Trading Partner**	**Import Value (million U.S. $s)**	**Import Share**
Permanently Exempted			**Permanently Exempted**		
South Korea	2,787	9.6%	Argentina	547	3.1%
Brazil	2,450	8.4%	Australia	213	1.2%
Argentina	222	0.8%	Total Exempted	760	4.4%
Australia	211	0.7%	**Not Exempted**		
Total Exempted	5,669	19.5%	Canada	7,043	40.5%
Not Exempted			China	1,842	10.6%
European Union	5,993	20.6%	Russia	1,576	9.1%
Canada	5,187	17.9%	U.A.E.	1,388	8.0%
Mexico	2,494	8.6%	European Union	1,249	7.2%
Japan	1,659	5.7%	Bahrain	585	3.4%
Russia	1,431	4.9%	India	382	2.2%
Taiwan	1,264	4.4%	South Africa	340	2.0%
Turkey	1,192	4.1%	Qatar	307	1.8%
China	1,009	3.5%	Mexico	262	1.5%
India	761	2.6%	Japan	251	1.4%
Vietnam	532	1.8%	Indonesia	202	1.2%
Thailand	355	1.2%	Venezuela	180	1.0%
South Africa	279	1.0%	Brazil	138	0.8%
U.A.E.	218	0.8%	South Korea	112	0.6%
*Total Nonexempted	23,369	80.5%	*Total Nonexempted	16,643	95.6%
U.S. Total (All Countries)	**29,038**	**100.0%**	**U.S. Total (All Countries)**	**17,403**	**100.0%**

Source: Created by CRS using data from the Census Bureau on HTS products included in the Section 232 proclamations.

Notes: European Union includes 28 member states. U.A.E. refers to the United Arab Emirates. (*) Total nonexempted includes additional countries not listed.

Author Contact Information

Rachel F. Fefer, Coordinator
Analyst in International Trade and Finance
rfefer@crs.loc.gov, 7-1804

Vivian C. Jones, Coordinator
Specialist in International Trade and Finance
vcjones@crs.loc.gov, 7-7823

Keigh E. Hammond
Research Librarian
khammond@crs.loc.gov, 7-2393

Brandon J. Murrill
Legislative Attorney
bmurrill@crs.loc.gov, 7-8440

Michaela D. Platzer
Specialist in Industrial Organization and Business
mplatzer@crs.loc.gov, 7-5037

Brock R. Williams
Analyst in International Trade and Finance
bwilliams@crs.loc.gov, 7-1157