

Section 232 Investigations: Overview and Issues for Congress

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Section 232 Investigations: Overview and Issues for Congress

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(s) under investigation “is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.” President Trump used Section 232 authority to apply new tariffs to steel and aluminum imports and to create negotiating leverage by suggesting tariffs on certain other goods such as automobiles and automobile parts. The Biden Administration may consider how to address the existing Section 232 tariffs. Prior to the Trump Administration, the last Section 232 investigation was in 2001 and a president arguably last acted under Section 232 in 1986. Congress has interest in Section 232 actions because they are a delegation of its constitutional authority over tariffs and commerce with foreign nations, and raise a number of economic and policy issues. Some Members have introduced legislation to revise Section 232 authorities.

Effective March 23, 2018, President Trump applied 25% and 10% tariffs, respectively, on certain steel and aluminum imports and, in February 2020, expanded the scope of products subject to the additional tariffs. Permanent tariff exemptions in exchange for quantitative limitations on U.S. imports were negotiated covering steel for Brazil and South Korea, and both steel and aluminum for Argentina. Australia was permanently exempted from both tariffs, with no quantitative restrictions. The Trump Administration removed tariffs on steel and aluminum imports from Mexico and Canada, in part to secure congressional support for the new United States-Mexico-Canada Agreement (USMCA), and after the three countries agreed to establish an import monitoring mechanism. U.S. tariffs on steel and aluminum under Section 232 currently affect \$13.1 billion of U.S. annual imports, excluding countries currently exempted. The tariffs will remain in place unless the Biden Administration removes or amends them.

Commerce is managing a process for Section 232 tariff exclusions of steel and aluminum products in order to limit the tariffs’ potential negative domestic effects on U.S. businesses and consumers. As of February 7, 2021, Commerce received 288,021 exclusion requests, 260,450 for steel and 27,571 for aluminum. Of those requests, the agency granted 170,084 exclusions and denied 59,134, with 44,325 exclusion requests rejected or withdrawn. The remaining requests were pending. Several Members of Congress and the Commerce Inspector General have raised issues and concerns about the exclusion process. Commerce has made multiple updates intended to clarify and simplify the exclusion process and decrease the overall volume of requests.

Global overcapacity in steel and aluminum production, mainly driven by China, has been an ongoing concern of Congress. 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. The George W. Bush, Obama, Trump, and Biden Administrations each engaged in multilateral discussions to address global steel capacity reduction, including through the Organization for Economic Co-operation and Development (OECD) and other international forums.

Several U.S. trading partners are challenging the steel and aluminum tariffs under World Trade Organization (WTO) dispute settlement rules and have threatened or enacted retaliatory measures. Some analysts view the U.S. unilateral actions as potentially undermining WTO rules, which generally prohibit parties from acting unilaterally, but provide exceptions, including when parties act to protect “essential security interests.” In turn, the United States has initiated cases against other countries’ retaliatory measures under WTO rules. Some U.S. firms are also challenging the Trump Administration’s actions domestically.

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Congress enacted Section 232 during the Cold War when national security issues were at the forefront of national debate. The Trade Expansion Act of 1962 sets clear steps and timelines for Section 232 investigations and actions, and 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.

After imposing the steel and aluminum tariffs, the Trump Administration opened six additional Section 232 investigations, intensifying debate over potential legislation to revise the authority. The investigations covered imports of:

- automobile and automobile parts, initiated May 23, 2018;
- uranium ore and related products, initiated July 18, 2018;
- titanium sponge, initiated March 4, 2019;
- transformers and certain grain-oriented electrical steel parts, initiated May 4, 2020;
- mobile cranes, initiated May 6, 2020; and
- vanadium, initiated June 3, 2020.

The Department of Commerce determined imports of autos, uranium, and titanium sponge threaten to impair national security, but President Trump did not impose tariffs or quotas on these imports and did not release the Commerce reports. Commerce also completed and submitted its reports on transformers and vanadium; the findings have not been disclosed and no further trade enforcement action has been taken. The mobile crane investigation was withdrawn by the petitioner.

The Biden Administration may consider whether to sustain, withdraw, or amend the existing steel and aluminum tariffs; if and how to change the product exclusion process; and whether to make public the other completed investigations.

President Trump's Section 232 tariff actions and investigations continue to raise a number of potential issues for Congress. The focus on imports from traditional U.S. allies has prompted some policymakers to raise questions about the proper interpretation of threats to national security on which Section 232 investigations are based. The tariffs' economic effects—relatively higher domestic steel and aluminum prices, expansion in domestic production in those sectors, and higher costs for consumers and many end users (e.g., auto manufacturing and construction)—have also prompted reactions from several Members, some in support of the measures and others voicing concerns. Previously, Congress held hearings on the potential economic and broader policy effects of the tariffs. Legislation has been introduced during the 116th and 117th Congress to override the tariffs that have already been imposed, or to revise or potentially limit the President's trade enforcement authority.

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Introduction

Section 232 of the Trade Expansion Act of 1962 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.” The Trump Administration conducted eight investigations, two of which led to presidential proclamations imposing tariffs on U.S. imports of certain steel and aluminum products using Section 232 powers.¹ The Constitution gives Congress primary authority over international trade matters.² In the case of Section 232, Congress has delegated to 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.³

Section 232 is one of several tools the United States has at its disposal to address trade barriers and other foreign trade practices. Additional tools include (1) investigations and actions to address import surges that are or threaten to be a “substantial cause of serious injury” to a U.S. industry (Section 201 of the Trade Act of 1974); (2) those that address violations or denial of U.S. benefits under trade agreements (Section 301 of the Trade Act of 1974); and (3) antidumping and countervailing duty laws (Title VII of the Tariff Act of 1930) to counter injurious unfair trade practices.

The Biden Administration has stated it will review President Trump’s Section 232 actions and make determinations on how to handle the existing tariffs, exclusion process, and outstanding investigations for which the reports have not been made public. Investigations initiated and import restrictions imposed by the Executive Branch under Section 232 potentially raise a number of economic and policy issues for Congress. Such issues may include, among others: the effects of Section 232 tariffs on industries, workers, farmers, and consumers in congressional districts and states; the Executive Branch’s adherence to congressional requirements in its implementation of Section 232 actions, including transparency and time limitations; the tariff exclusion processes; and the potential impact of unilateral tariff actions on the multilateral trading system, U.S. trading relationships, and U.S. alliances

This report provides an overview of Section 232, analyzes the Trump Administration’s Section 232 investigations and actions, steps the Biden Administration may take, and considers select 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

Following an investigation by the Department of Commerce, Section 232 of the Trade Act of 1962 authorizes the President to impose imports restrictions on products, imported into the United States “in such quantities or under such circumstances as to threaten to impair the national security.” The Trade Act of 1962, including Section 232, was enacted during the Cold War when

¹ P.L. 87-794; 19 U.S.C. §1862.

² Article I, Section 8, of the Constitution gives Congress the power “To regulate Commerce with foreign Nations” and “To lay and collect Taxes, Duties, Imposts, and Excises”

³ 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 can override presidential actions in the case of adjustments to petroleum or petroleum product imports. P.L. 96-223, Section 402. For more information, see **Appendix A**.

national security issues were at the forefront. Section 232 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 timelines for a Section 232 investigation, but the executive branch's interpretation of "national security" and the potential scope of any investigation can be expansive.

Key Provisions and Process

Upon request by the head of any U.S. department or agency, by petition by an interested party, or by self-initiation, the Secretary of Commerce must commence a Section 232 investigation. The 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 as to whether or not the targeted product(s) 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. According to the statute, 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.

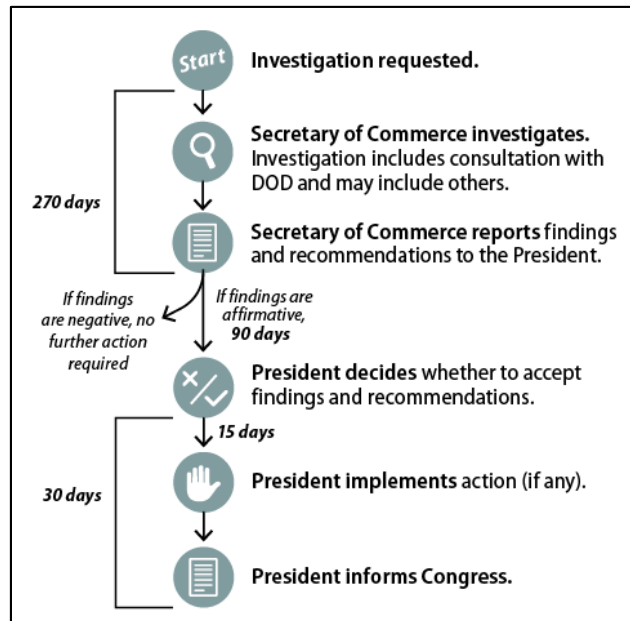
While there is no specific definition of national security in the statute, it states that the investigation must consider certain factors, such as domestic production needed for projected national defense requirements; domestic capacity; the availability of human resources and supplies essential to the national defense; and potential unemployment, loss of skills or investment, or decline in government revenues resulting from displacement of any domestic products by excessive imports.⁴

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 decide to take no action. 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*. Presidential actions may stay in place "for such time, as he deems necessary to adjust the imports of such article and its derivatives so that such imports will not so threaten to impair the national security."⁵ Congress does not have to approve of a Section 232 determination or action.⁶

⁴ 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).

⁵ Section 232(b).

⁶ For more information on TPA, see CRS In Focus IF10038, *Trade Promotion Authority (TPA)*, by Ian F. Fergusson.

Figure 1. Section 232 Investigation Process

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

Section 232 Investigations to Date

The Commerce Department (or the Department of the Treasury before it) initiated a total of 31 Section 232 investigations between 1962 and 2020 (see **Table B-1**). In 16 of these cases, Commerce determined that the targeted imports did not threaten to impair national security. In 14 cases, Commerce determined that the targeted imports threatened to impair national security and made recommendations to the President (see **Figure 2**). The President took action nine times. One case was terminated at the petitioner’s request before Commerce completed its investigation. Prior to the Trump Administration, 10 Section 232 investigations were self-initiated by the Administration. (For a full list of cases to date, see **Appendix B**.)

In eight investigations dealing with crude oil and petroleum products, Commerce decided that the 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.⁷

⁷ The Section 232 petroleum embargo against Iran was revoked by Executive Order 12282 of January 19, 1981, “Prohibitions Against Transactions Involving Japan, Revocation,” 46 *Federal Register* 7925, 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)

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 presidential action 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.”⁸ 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 arguably last acted under Section 232 in 1986. 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.⁹ These agreements predate the founding of the World Trade Organization (WTO), which established multilateral rules prohibiting voluntary export restraints.¹⁰

The Trump Administration initiated eight Section 232 investigations into the imports of: steel; aluminum; automobiles, including sport utility vehicles, vans and light trucks, and automotive parts; uranium; titanium sponge; electrical transformers and certain grain-oriented electrical steel components; mobile cranes; and vanadium imports.¹¹ The latter two investigations were in response to industry petitions.

Sanctions Regulations,” 61 *Federal Register* 16042, March 30, 2006.

⁸ Department of Commerce, *The Effect of Crude Oil and Refined Petroleum Product Imports on the National Security*, January 1989.

⁹ U.S. President (R. Reagan), “Statement on the Revitalization of the Machine Tool Industry” *Weekly Compilation of Presidential Documents*, vol. 22 (December 16, 1986), p. 1654.

¹⁰ Article 11 of the WTO Agreement on Safeguards stipulates that “a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members.” There are exceptions to this prohibition, including for “[a]n import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement.” For more information, see https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm#fnt-3.

¹¹ U.S. Department of Commerce, “U.S. Department of Commerce Initiates Section 232 Investigation into Auto Imports,” press release, May 23, 2018.

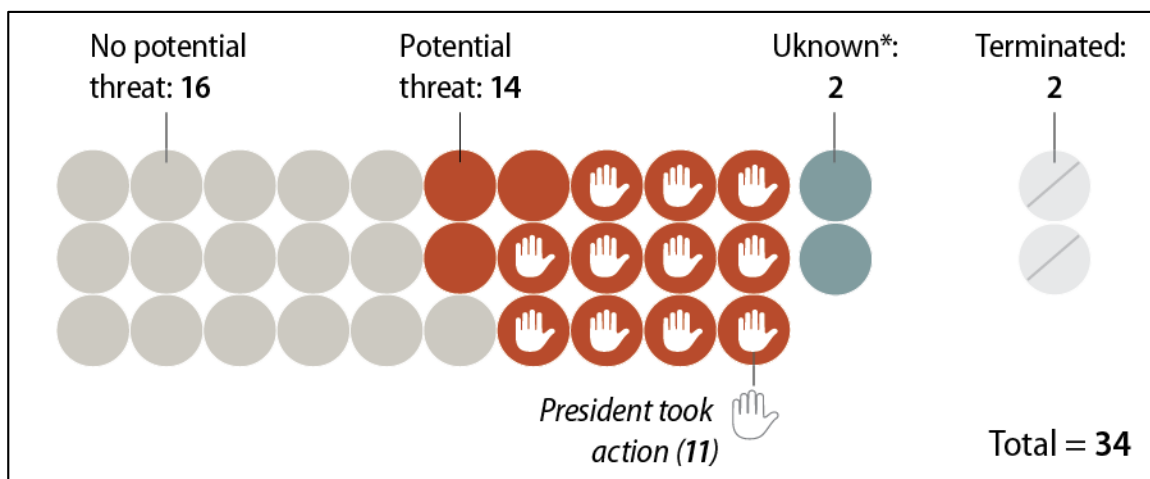
U.S. Department of Commerce, “U.S. Department of Commerce Initiates Section 232 Investigation into Uranium Imports,” press release, July 18, 2018.

U.S. Department of Commerce, March 2019, “U.S. Department of Commerce Initiates Section 232 Investigation into Titanium Sponge Imports,” press release, March 2019.

U.S. Department of Commerce, “U.S. Secretary of Commerce Wilbur Ross to Initiate Section 232 Investigation into Imports of Laminations and Wound Cores for Incorporation into Transformers, Electrical Transformers, and Transformer Regulators,” press release, May 4, 2020.

U.S. Department of Commerce, “U.S. Department of Commerce to Initiate Section 232 Investigation into Mobile Crane Imports,” press release, May 6, 2020.

U.S. Department of Commerce, “U.S. Secretary of Commerce Wilbur Ross Initiates Section 232 Investigation into Imports of Vanadium,” press release, June 2, 2020.

Figure 2. Section 232 Investigations

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

Notes: * indicates investigation complete but results have not been made public. 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 was one of the foundational agreements of the WTO, allows WTO members to take measures to protect “essential security interests.” 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 the WTO agreements (see “WTO Cases”).

Section 232 Actions on Steel and Aluminum

In April 2017, in two presidential memoranda, President Trump instructed Commerce to give priority to two self-initiated investigations into the national security threats posed by imports of steel and aluminum.¹² In conducting its investigation, Commerce held public hearings and solicited public comments via the *Federal Register* and consulted with the Secretary of Defense and other agencies, as required by the statute.¹³ In addition to the hearings, stakeholders submitted approximately 300 comments regarding the Section 232 investigation and potential actions. Some

¹² U.S. President (Trump), “Memorandum on Steel Imports and Threats to National Security,” *Weekly Compilation of 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>.

¹³ 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.

parties (mostly steel producers) supported broad actions to limit steel imports, while others (mostly users and consuming industries such as automakers) opposed any additional tariffs or quotas on imports. The U.S. aluminum industry held differing views of the global aluminum tariff, with most parties opposing it.¹⁴ Some stakeholders in the steel and aluminum industries 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.¹⁵

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.”¹⁶ The 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 primary metals (e.g., production of iron and steel and aluminum) machinery, transportation equipment, and electrical equipment.¹⁷ 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.¹⁸ Section 232 investigations prior to 2001 generally used a narrower definition considering U.S. national defense needs or overreliance on foreign suppliers. Commerce continued to use the broader definition for national security for the other Section 232 investigations under the Trump Administration. If the Biden Administration were to initiate a new Section 232 investigation, Commerce could adjust the definition of national security and scope of such as investigation.

Commerce Findings and Recommendations

The final reports, submitted to President Trump on January 11 and January 22, 2018, respectively, concluded that imports of certain steel mill products¹⁹ and certain types of primary aluminum and unwrought aluminum²⁰ “threaten to impair the national security” of the United States. The

¹⁴ CRS In Focus IF10998, *Effects of U.S. Tariff Action on U.S. Aluminum Manufacturing*, by Michaela D. Platzer.

¹⁵ “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.

¹⁶ U.S. Department of Commerce, Bureau of Industry and Security, “The Effect of Imports of Steel on the National Security,” p. 1, 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).

¹⁷ In addition to being labeled as one of the “critical infrastructure sectors,” both steel and aluminum industry organizations seek designation as an “essential industry” to allow continuation of operations in the event of federal emergencies such as during the Covid-19 pandemic. See American Iron and Steel Institute, “AISI Urges Administration to Designate Steel as Essential Industry,” March 20, 2020, and Aluminum Association, “American Aluminum an Essential Industry in a Moment of National Emergency,” March 19, 2020.

¹⁸ 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.

¹⁹ 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/section-232-investigation-effect-imports-steel-us-national-security>.

²⁰ U.S. Department of Commerce Bureau of Industry and Security, “The Effect of Imports of Aluminum on the

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 then-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 that “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.²¹ He also noted, however, that “the U.S. military requirements for steel and aluminum each only represent about three percent of U.S. production.”²²

President Trump’s 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.²³ The proclamations outlined 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 were to be imposed *in addition* to any duties already in place, including antidumping and countervailing duties (AD/CVD).

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

President Trump officially notified Congress of his actions in a letter dated April 6, 2018. Several Members voiced their views since the investigations were launched, including through hearings and letters to President Trump.²⁴

On January 24, 2020, after the steel and aluminum tariffs had been in effect for over 22 months, President Trump expanded the scope of products covered to include “derivative” products, effective February 8, 2020.²⁵ The President’s proclamation stated that the additional tariffs were

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).

²¹ 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.

²² Ibid.

²³ 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.

²⁴ 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.

²⁵ The White House, “Proclamation on Adjusting Imports of Derivative Aluminum Articles and Derivative Steel

needed because the domestic steel and aluminum industries continued to be below the target capacity utilization identified in the initial Commerce investigations, and imports of certain finished, or derivative, products were undermining the purpose of the original proclamations.

With the increased costs of steel and aluminum inputs because of the Section 232 tariffs, some U.S. manufacturers had trouble competing with importers of finished, or derivative, products (e.g., steel wheels or metal filing cabinets). U.S. industries manufacturing similar products have sought AD/CVD protection from import competition. Thus, there has been a noticeable increase in AD/CVD investigations on finished products containing steel or aluminum. The additional AD/CVD cases as a result of the Section 232 tariffs are in addition to any AD/CVD duties already in place. Some economists have called this phenomenon “cascading protection.”²⁶

According to the January 2020 proclamation, the countries that successfully negotiated exemptions from each of the steel and aluminum tariffs (see below) are also exempt from the additional tariffs on derivative products. The Commerce process for requesting product exclusions applies to derivative products (see below).

Some analysts have raised questions about the President’s authority to impose the additional tariffs and some U.S. manufacturers have challenged the action (see “Proclamation Imposing Tariffs on Steel-Derivative Products”). President Trump’s actions under the 2020 proclamation relies on the 2018 Section 232 investigations, although those investigations did not cover steel and aluminum derivative products. House Ways and Means Committee Member Representative Jackie Walorski sent a letter to Commerce questioning why a new investigation was not needed for the change in product scope, and how the change would help increase domestic industry capacity utilization, among other issues.²⁷ The Section 232 statute does not specifically allow for additional actions after the initial timeline or provide an expiration date of an investigation. Similar questions as to whether the President’s authority to act is time-limited have been raised in relation to the Section 232 auto investigation (see “Automobiles and Parts”). In April 2021, the Court of International Trade (CIT) ruled that President Trump’s proclamation imposing tariffs on steel-derivative products was untimely and thus “invalid as contrary to law.”²⁸

Country Exemptions

Although tariffs were initially imposed on most trading partners, including many allies and FTA partners, President Trump expressed a willingness to consider exceptions to individual countries, specifically 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. Initially, President Trump temporarily excluded imports of steel and aluminum products from Mexico and Canada from the new tariffs, and the Trump Administration implicitly and explicitly linked a successful outcome of the North American Free Trade Agreement (NAFTA)

Articles into the United States,” 85 *Federal Register* 5281, January 24, 2020. For a full list of derivative products covered, see <https://www.federalregister.gov/documents/2020/01/29/2020-01806/adjusting-imports-of-derivative-aluminum-articles-and-derivative-steel-articles-into-the-united>. Steel and aluminum derivative products are defined according to certain criteria and the specific covered products are specified in annexes of the presidential proclamation.

²⁶ Chad P. Bown, “Trump’s steel and aluminum tariffs are cascading out of control,” *Peterson Institute for International Economics*, February 4, 2020.

²⁷ Letter from Rep. Jackie Walorski to Wilbur L. Ross Jr., Secretary of Commerce, March 3, 2020.

²⁸ *PrimeSource Bldg. Prods., Inc. v. United States*, 2021 Ct. Intl. Trade LEXIS 36, *12-13 (Ct. Int’l Trade Apr. 5, 2021).

renegotiation to maintaining the exemptions. With regard to other countries, President Trump charged the USTR with negotiating bilaterally with trading partners on potential exemptions.

On March 22, 2018, after discussions with multiple countries, President Trump issued proclamations temporarily excluding Australia, Argentina, Brazil, South Korea, the European Union (EU), Canada and Mexico, from the Section 232 tariffs.²⁹ President Trump gave a deadline of May 1, 2018, by which time 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 30 days, until June 1, 2018, and exempted Argentina, Australia, and Brazil from the tariffs indefinitely pending final agreements.³⁰ South Korea, which pursued a resolution over the tariffs in the context of discussions to modify the U.S.-South Korea (KORUS) Free Trade Agreement, agreed to an absolute annual quota for 54 separate subcategories of steel and was exempted from the steel tariffs.³¹ South Korea did not negotiate an agreement on aluminum and its exports to the United States have been subject to the aluminum tariffs since May 1, 2018.

On May 31, 2018, President Trump 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.³² Brazil, like South Korea, did not negotiate an agreement on aluminum and is subject to the aluminum tariffs. The Trump Administration also proclaimed aluminum imports from Argentina permanently exempt from the aluminum tariffs subject to an absolute quota.³³ The Trump Administration proclaimed 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, 2018, imports of steel and aluminum from all other countries were subject to the Section 232 tariffs. The imposition of tariffs on major trading partners such as Canada, Mexico, and the EU increased the economic significance of the tariffs and prompted criticism from several Members of Congress, including the chairs of the House Ways and Means and Senate Finance Committees.³⁴

The Trump Administration completed negotiations on the United States-Mexico-Canada Agreement (USMCA) on September 30, 2018, to replace the NAFTA. The USMCA did not resolve or address the Section 232 tariffs on imported steel and aluminum from Canada and

²⁹ 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.

³⁰ Executive Office of the President, “President Donald J. Trump Approves Section 232 Tariff Modifications,” press release, April 30, 2018, <https://trumpwhitehouse.archives.gov/briefings-statements/president-donald-j-trump-approves-section-232-tariff-modifications/>.

³¹ 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>.

³² Proclamation 9759 of May 31, 2018, “Adjusting Imports of Steel into the United States,” 83 *Federal Register* 25857, June 5, 2018.

³³ Proclamation 9758 of May 31, 2018 “Adjusting Imports of Aluminum into the United States,” 83 *Federal Register* 25849, June 5, 2018.

³⁴ Chairman Kevin Brady, “Brady Statement on Administration’s Action on Steel and Aluminum Tariffs,” press release, May 31, 2018; 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>.

Mexico, but included a requirement that motor vehicles contain 70% or more of North American steel and aluminum content to qualify for duty-free treatment.³⁵ The parties also signed side letters in case of Section 232 action on autos and auto parts, to exclude certain amounts of Canadian and Mexican exports of these products and provide a 60-day period to reach a negotiated outcome.³⁶ Separately, on May 17, 2019, the three parties announced a new monitoring mechanism to prevent surges in imports of steel and aluminum, and agreed to withdraw all Section 232 steel and aluminum tariffs and related retaliatory tariffs.³⁷

A year later, in May 2020, the American Primary Aluminum Association, which represents U.S. primary aluminum producers, alleged a surge in aluminum imports from Canada and called for the re-imposition of tariffs.³⁸ The U.S. Chamber of Commerce, the National Foreign Trade Council, and Aluminum Association opposed the proposal.³⁹ After consultations with Canada, the Trump Administration re-imposed tariffs on imports of non-alloyed unwrought aluminum from Canada, effective August 16, 2020.⁴⁰ Canada called the new tariffs “absurd” and issued a list of products targeted for retaliatory tariffs.⁴¹ The day before Canada’s retaliatory tariffs were to go into effect, the Trump Administration withdrew its tariffs but set monthly quotas for imports which Canada denied agreeing to.⁴²

A day before leaving office, President Trump exempted aluminum imports from the United Arab Emirates (UAE) from the tariffs, citing “an important security relationship” between the two countries.⁴³ A quota was negotiated. Analysts raised concerns that the action was linked to the UAE’s signing of the “Abraham Accords” with Israel and not to the aluminum industry. President

³⁵ USTR, United States-Mexico-Canada Agreement Text, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement>. In a side letter on automobiles, the United States also agreed that, in the event of Section 232 measure imposed on passenger vehicles and auto parts, that the United States would exclude 2.6 million passenger vehicles, all light trucks imported from Mexico, and up to \$108 billion worth (in declared customs value) of auto parts annually. For more information, see CRS In Focus IF11387, *USMCA: Motor Vehicle Provisions and Issues*, by M. Angeles Villarreal, Bill Canis, and Liana Wong. On USMCA, see CRS Report R44981, *The United States-Mexico-Canada Agreement (USMCA)*, by M. Angeles Villarreal and Ian F. Fergusson.

³⁶ Side letters are available at <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between>.

³⁷ USTR, “Joint Statement by the United States and Mexico on Section 232 Duties on Steel and Aluminum,” May 17, 2019, and “Modification of Regulations Regarding the Steel Import Monitoring and Analysis System,” 85 *Federal Register* 17515, March 30, 2020.

³⁸ American Primary Aluminum Association letter to USTR, May 26, 2020, available at <https://www.prnewswire.com/news-releases/apaa-calls-on-ambassador-lighthizer-to-restore-tariffs-on-surging-canadian-aluminum-imports-301066198.html>.

³⁹ U.S. Chamber of Commerce, “U.S. Chamber Opposes Aluminum Tariffs on Canada,” June 23, 2020; “Business groups oppose Section 232 tariffs on Canadian aluminum,” *Inside U.S. Trade*, June 24, 2020.

⁴⁰ White House, “Proclamation on Adjusting Imports of Aluminum Into the United States,” press release, August 6, 2020, and “Adjusting Imports of Aluminum Into the United States,” 85 *Federal Register* 49921, August 14, 2020.

⁴¹ Andy Blatchford, “Trump’s ‘absurd decision’ to slap aluminum tariffs on Canada draws threat of C\$3.6B in retaliatory duties,” *PoliticoPro*, August 7, 2020, and Government of Canada, “Notice of intent to impose countermeasures action against the United States in response to tariffs on Canadian aluminum products,” August 7, 2020, <https://www.canada.ca/en/department-finance/programs/consultations/2020/notice-intent-impose-countermeasures-action-against-united-states-response-tariffs-canadian-aluminum-products.html>.

⁴² Proclamation 10106 of October 27, 2020, “Adjusting Imports of Aluminum Into the United States,” 85 *Federal Register* 68709-68713, October 27, 2020; Lauren Gardner, “Canada drops retaliation plans after U.S. ends aluminum levies,” *Politico Pro*, September 15, 2020.

⁴³ Executive Office of the President, “Adjusting Imports of Aluminum Into the United States,” 85 *Federal Register* 6825-6831, January 25, 2021.

Biden nullified Trump's action before it took effect noting that "imports from the UAE may still displace domestic production."⁴⁴

Regarding the EU, on October 16, 2018, the Trump Administration notified Congress under TPA of new broad-based U.S. trade agreement negotiations with the EU to address ongoing trade frictions including Section 232 tariffs. The Trump Administration was seeking a "fairer, more balanced" U.S.-EU relationship. The TPA notification followed the July 2018 Joint Statement (agreed between President Trump and European Commission President Jean-Claude Juncker) that aimed to de-escalate trade tensions in which the two sides agreed to not impose further tariffs on each other's trade products while negotiations are active.⁴⁵ The negotiations did not start formally under the Trump Administration, largely due to lack of U.S.-EU consensus on their scope. President Biden has stated he does not want to start new trade agreement negotiations at this time but has not ruled out addressing specific bilateral trade issues. When asked about the steel and aluminum tariffs, Commerce Secretary Raimundo stated "the 232 tariffs on steel and aluminum have in fact helped save American jobs in the steel and aluminum industries."⁴⁶ Since then, the Biden Administration and EU announced they will enter into "discussions on the mutual resolution of concerns in this area that addresses steel and aluminum excess... to find solutions before the end of the year that will demonstrate how the U.S. and EU can address excess capacity, ensure the long-term viability of our steel and aluminum industries, and strengthen our democratic alliance."⁴⁷ The parties agreed not to further increase tariffs while the discussions continue.

Additional Tariff Increases on Steel Imports from Turkey

President Trump raised steel tariffs to 50% on Turkish imports in August 2018, and then lowered them to 25% in May 2019. The President cited trade reasons for the increased tariffs, however some analysts have suggested other foreign policy objectives may have also played a part. U.S. importers contested the August 2018 increase in steel tariffs on Turkey in the Court of International Trade (CIT), claiming that the action did not follow Section 232's procedural mandates. In a July 2020 final opinion, CIT judges agreed.

See "Domestic Court Challenges", and CRS In Focus IF10961, *U.S.-Turkey Trade Relations*, by Shayerah I. Akhtar.

Product Exclusions

In 2018, to limit potential negative domestic impacts of the tariffs on U.S. consumers and consuming industries, Commerce published an interim final rule establishing a methodology for parties located in the United States to request exclusions for items that are not "produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality."⁴⁸ Requests for exclusions and objections to requests were initially posted on the *regulations.gov*

⁴⁴ White House, "A Proclamation on Adjusting Imports of Aluminum Into the United States," February 1, 2021.

⁴⁵ White House Factsheet, "President Donald J. Trump Launches a New Reciprocal Trade Relationship with the European Union," July 27, 2018.

⁴⁶ Senator Pat Toomey, *Twitter for iPhone*, April 7, 2021, 4:21 PM.

⁴⁷ U.S. Trade Representative, "Joint United States-European Union Statement on Addressing Global Steel and Aluminum Excess Capacity," May 17, 2021.

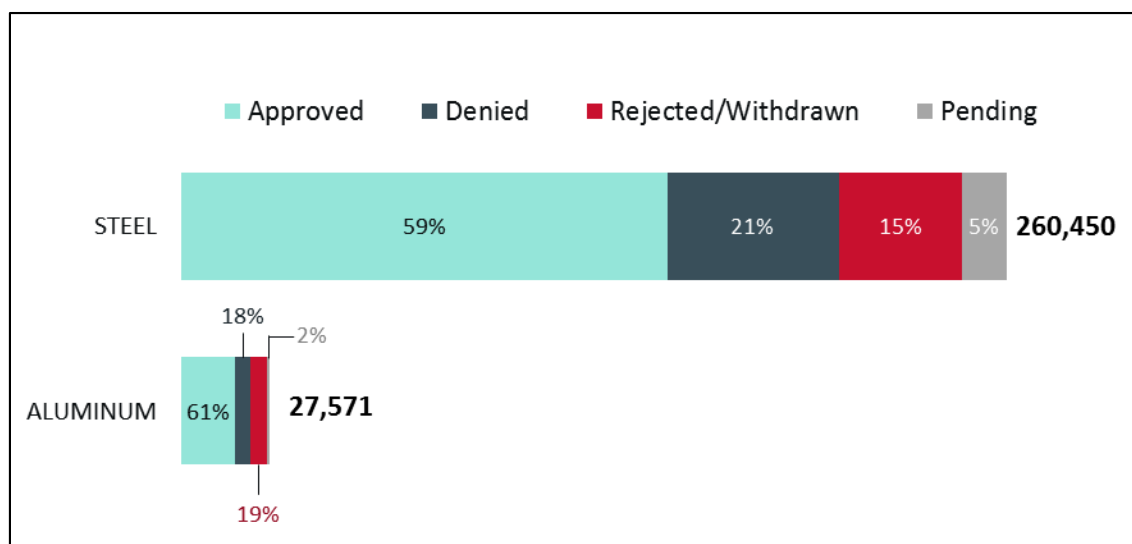
⁴⁸ U.S. Department of Commerce, Bureau of Industry and Security, "Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum into the United States," 83 *Federal Register* 12106, March 19, 2018.

website, creating a cumbersome process as the number of requests grew.⁴⁹ The rule went into effect the same day as publication to allow for immediate submissions.

Commerce reviews exclusion requests and makes determinations based upon national security considerations. To minimize the impact of any single exclusion on the Section 232 action, the rule only allowed “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.⁵⁰ Any approved product exclusion was initially 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 is not to exceed 90 days, creating a period of uncertainty for petitioners. Exclusions will generally last for one year from the date of signature.⁵¹

As of February 7, 2021, Commerce received 288,021 exclusion requests (ERs), 260,450 for steel and 27,571 for aluminum. Of those requests, the agency granted 170,084 exclusions and denied 59,134; 44,325 ERs were rejected or withdrawn. The remaining requests were pending (see **Figure 3**).⁵² Some Members have advocated for or against specific exclusions in support of constituents that represent different parts of the supply chain, in some cases putting Members on opposing sides of an exclusion request.⁵³

Figure 3. Section 232 Exclusion Requests as of February 7, 2021



Source: CRS based on data from Department of Commerce.

⁴⁹ Docket Number BIS-2018-0006 (Steel); Docket Number BIS-2018-0002, (Aluminum).

⁵⁰ A parallel requirement applies for aluminum requests.

⁵¹ 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; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum*, Docket BIS-2018-0006, <https://www.regulations.gov/>.

⁵² Data obtained by CRS from Bureau of Industry and Security, Department of Commerce, February 9, 2021.

⁵³ For example, see letters from Reps. H. Rogers, Kaptur, Guthrie, Comer, M. Rogers, Barr, Aderholt, Johnson, Gonzalez and Gibbs to President Trump, February 7, 2020, and from Sen. Toomey to Secretary Ross, February 5, 2020, related to exclusion requests from Allegheny Technologies Incorporated (ATI).

Multiple companies raised strong concerns about the intensive, time-consuming process to submit exclusion requests; the lengthy waiting period to hear back from Commerce, which has exceeded 90 days in some cases; what some view as an arbitrary nature of acceptances and denials; and that all exclusion requests to date have been rejected when a U.S. steel or aluminum producer has objected.⁵⁴ Some steel companies who expected to benefit from the tariffs and whose exclusion requests have been denied are experiencing financial difficulty.⁵⁵

Several Members of Congress raised concerns about the exclusion process. A bipartisan group of House Members, for example, noted the slowness of the review process and the significant burden it places on manufacturers, especially small businesses.⁵⁶ 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 sunseting them if they have a "significant negative impact."⁵⁷

Commerce's Bureau of Industry and Security (BIS) is the lead agency involved in making final decisions regarding whether the requests are granted or denied. Rulemaking for products exclusions has been an evolving process. Commerce asserts it has taken several steps to improve the exclusion process, including increasing and organizing its staff "to efficiently process exclusion requests," and "expediting the grant of properly filed exclusion requests that receive no objections." The agency's International Trade Administration (ITA) also became involved in the exclusion process by analyzing exclusion requests and objections to determine whether there is sufficient domestic production available to meet the requestor's product needs.⁵⁸

On September 6, 2018, Commerce announced a new rule to allow companies to rebut objections to petitions.⁵⁹ The rule, published on September 11, 2018, included new rebuttal and counter-rebuttal procedures, more information about the exclusion submission requirements and process, the criteria Commerce uses in deciding whether to grant an exclusion request, and revised estimates of the total number of exclusion requests and objections that Commerce expects to receive.⁶⁰ In June 2019, Commerce launched an online 232 Exclusions Portal for submitting and processing of steel and exclusion requests, objections, rebuttals, and sur-rebuttals.⁶¹ The portal is for all submissions on or after June 13, 2019, while all prior submissions reside on

⁵⁴ Ed Crooks and Fan Fei, "Trade war winners and losers grapple with Trump tariff chaos," *The Financial Times*, July 23, 2018 and Christine McDaniel and Joe Brunk, "Section 232 Steel and Aluminum Tariff Exclusion Requests Continue Apace," *Mercatus The Bridge*, January 21, 2020.

⁵⁵ Bryan Gruley and Joe Deaux, "The Biggest Fan of Trump's Steel Tariffs is Suing Over Them," *Bloomberg*, February 13, 2020.

⁵⁶ 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.

⁵⁷ Ibid.

⁵⁸ U.S. Department of Commerce, Bureau of Industry and Security, "Interim Final Rule. Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum," 83 *Federal Register* 46026, September 11, 2018.

⁵⁹ Testimony by Department of Commerce Assistant Secretary For Export Administration Bureau of Industry and Security Richard Ashooh at Senate Subcommittee on Commerce, Justice, and Related Agencies hearing on *Conduct Oversight of Bureau of Industry & Security, International Trade Administration, & US International Trade Commission*, September 6, 2018, https://www.appropriations.senate.gov/hearings/conduct-oversight-of-bureau-of-industry-and-security-international-trade-administration_us-international-trade-commission.

⁶⁰ Department of Commerce, Bureau of Industry and Security, "Submissions of Exclusion Requests and Objections to Submitted Requests for Steel and Aluminum," 83 *Federal Register* 46026, September 11, 2018.

⁶¹ Portal is available at <https://www.commerce.gov/page/section-232-investigations>.

regulations.gov. The portal may provide greater transparency of 232 submission documents, but does not necessarily impact Commerce's decision-making process.

Some Members have questioned the executive branch's processes and ability to pick winners and losers through granting or denying exclusion requests. For example, Members have requested that Commerce provide specific statistics and information on the exclusion requests and have sought greater transparency on the exclusion process. Legislation introduced in the 116th Congress to revise Section 232 would have addressed the process for excluding products such as having the U.S. International Trade Commission (USITC) administer the process or establishing specific timelines (e.g., 116th- S. 287, H.R. 940, S. 2362).

On October 29, 2018, the Commerce Inspector General's office (IG) initiated an audit of the agency's processes and procedures for reviewing and adjudicating product exclusion requests.⁶² In July 2019, the Commerce IG determined that BIS had a large backlog of exclusion requests and that requests with objections had lower completion rates.⁶³ In October 2019, the IG issued a Management Alert regarding "a lack of transparency that contributes to the appearance of improper influence in decision-making for tariff exclusion requests."⁶⁴ The IG recommended that BIS take specific actions to ensure transparency. Commerce did not announce any new changes to the exemption process or policy to further address the concerns noted in the IG report and by some Members.⁶⁵

In May 2020, Commerce issued a Federal Register notice requesting feedback on the exclusion process and "the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles."⁶⁶ The notice also solicited comments on potential revisions to the process.

In December 2020, Commerce announced further changes through the rule-making process.⁶⁷ Commerce allowed for General Approved Exclusions (GAEs) that may be used by any importing entity, eliminating the need for every entity to apply for an exclusion for the same product as well as quantity limits. Allowing GAEs are intended in part to reduce the burden on SMEs and on Commerce, who should receive fewer exclusion requests as a result. In addition, Commerce clarified language so that the same time standard would be applied to U.S. objectors and foreign suppliers.

To ensure that Commerce follows through with improving the exclusion process, in the Consolidated Appropriations Act, 2019 (P.L. 116-6), signed on February 15, 2019, Congress provided funding for "contractor support to implement the product exclusion process for articles

⁶² Letter from Carol Rice, Assistant Inspector General for Audit and Evaluation, to Daniel O. Hill, Acting Under Secretary of Commerce for Industry and Security, Bureau of Industry and Security, October 29, 2018.

⁶³ Letter from Carol Rice, Assistant Inspector General for Audit and Evaluation, to Nazak Nikakhtar, Assistant Secretary for Industry and Analysis, Performing the Non-Exclusive Duties of the Under Secretary of Commerce for Industry and Security, Bureau of Industry and Security, July 1, 2019.

⁶⁴ Letter from Carol Rice, Assistant Inspector General for Audit and Evaluation, to Secretary Ross, Management Alert: Certain Communications by Department Officials Suggest Improper Influence in the Section 232 Exclusion Request Review Process Final Memorandum No. OIG-20-003-M, October 28, 2019.

⁶⁵ For example, see Rep. Walorski Statement on Commerce OIG Finding "Improper Influence" in Section 232 Exclusion Process, October 30, 2019.

⁶⁶ Bureau of Industry and Security, Commerce, "Notice of Inquiry Regarding the Exclusion Process for Section 232 Steel and Aluminum Import Tariffs and Quotas," 85 *Federal Register* 31441, May 26, 2020.

⁶⁷ Bureau of Industry and Security, "Section 232 Steel and Aluminum Tariff Exclusions Process," 85 *Federal Register* 81060-81084, December 14, 2020.

covered by actions taken under section 232.”⁶⁸ To help ensure improvements to the exclusion process, Congress indicated that the additional money is to be “devoted to an effective Section 232 exclusion process” and required that Commerce submit quarterly reports to Congress.⁶⁹ Congress mandated that the reports identify:

- the number of exclusion requests received;
- the number of exclusion requests approved and denied;
- the status of efforts to assist small- and medium-sized businesses in navigating the exclusion process;
- Commerce-wide staffing levels for the exclusion process, including information on any staff detailed to complete this task; and
- Commerce-wide funding by source appropriation and object class for costs undertaken to process the exclusions.

In the Fiscal year 2022 Budget Request hearing, Secretary Raimundo stated that Commerce has reduced the time for companies to receive exclusions.⁷⁰

Tariffs Collected to Date

As of April 14, 2021, U.S. Customs and Border Protection (CBP) assessed \$7.7 billion in steel tariffs and \$2.4 billion in aluminum tariffs. About 63% of steel tariffs (\$4.5 billion) and 68% of aluminum tariffs (\$1.5 billion) were collected the first year the tariffs were in effect, highlighting the fact that revenue from these two Section 232 actions has been declining. This could reflect (1) the exemptions to Canada and Mexico in May 2019 (top suppliers of both metals), (2) the effect of exemptions granted to U.S. importers, and (3) declining imports in response to the relatively higher import prices, an objective of the Trump Administration’s actions.⁷¹ Re-imposed tariffs on Canadian aluminum could impact the trend in the future.

In addition, CBP has assessed \$18.8 million and \$1 million from the tariffs on steel and aluminum derivative products, respectively. The increased tariffs on these products reflects a January 24, 2020 Presidential proclamation that also placed tariffs on imports of products such as steel nails, tacks, and drawing pins; as well as aluminum stranded wire, cables, and plaited bands and other like products.⁷²

The tariffs collected are put in the general fund of the U.S. Treasury and are not allocated to a specific fund.

⁶⁸ P.L. 116-6 Division C, Title I.

⁶⁹ H.J.Res. 31, p. 609.

⁷⁰ U.S. Congress, House Committee on Appropriations, Subcommittee on Commerce, Justice, Science, and Related Agencies, *Fiscal Year 2022 Budget Request for The Department of Commerce*, 117th Cong., May 6, 2022.

⁷¹ See CBP website (<https://www.cbp.gov/newsroom/stats/trade>) for statistics. According to the President’s proclamations implementing the Section 232 tariffs, one of the objectives of the tariffs is to “reduce imports to a level that the Secretary assessed would enable domestic steel (and aluminum) producers to use approximately 80 percent of existing domestic production capacity and thereby achieve long-term economic viability through increased production.” 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.

⁷² Proclamation 9980 of January 24, 2020, “Adjusting imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States,” 85 *Federal Register* 5281, January 24, 2020.

Additional Trump Administration Investigations

Automobiles and Parts⁷³

Subsequent to the steel and aluminum investigations, the Trump Administration in May 2018 initiated a third Section 232 investigation into the import of passenger cars, sport utility vehicles, vans, light trucks, and automotive parts.⁷⁴ Commerce held a public hearing to hear from stakeholders on the potential impact of these imports on national security, identifying a broad set of factors related to national defense and the national economy for consideration.⁷⁵ As many foreign auto manufacturers have established facilities in the United States—accounting for 45% of employment in U.S. auto assembly and parts plants⁷⁶—Commerce specifically requested information on how the impact of auto imports on U.S. national security may differ when “U.S. production by majority U.S.-owned firms is considered separately from U.S. production by majority foreign-owned firms.”⁷⁷

Some Members and auto industry representatives spoke out in opposition to any tariffs during the auto industry Section 232 investigation. Three groups voiced support for at least limited measures to specifically address auto imports: the United Automobile Workers, the United Steelworkers, and the Forging Industry Association.⁷⁸ Commerce submitted the final Section 232 report to President Trump on February 17, 2019; the report has not been publicly released.⁷⁹ Some Members have asked for the report to be made public, and the Cause of Action Institute sued Commerce to release the report after an unsuccessful Freedom of Information Act request.⁸⁰ On March 6, 2020, Senator Toomey and other Members of Congress filed an amicus brief with the district court arguing, among other things, that (1) Congress needed the report in order to exercise oversight over the authority it had granted to the executive branch in Section 232; and (2) the President could not invoke executive privilege to withhold disclosure of the document.⁸¹ The court has not issued a decision in the case. Some analysts viewed the use of the Section 232

⁷³ CRS Specialist Bill Canis contributed to this section.

⁷⁴ For a further discussion of the Section 232 auto industry investigation, see CRS In Focus IF10971, *Section 232 Auto Investigation*, coordinated by Rachel F. Fefer.

⁷⁵ U.S. Department of Commerce, “Notice on Section 232 National Investigation of Imports of Automobiles and Automotive Parts,” 83 *Federal Register* 24735, May 30, 2018.

⁷⁶ In 2017, employment in manufacture of motor vehicles, bodies and trailers, and vehicle parts was 972,000; of those, 431,000 worked in foreign-owned plants in the United States, according to the latest data from the U.S. Department of Commerce, Bureau of Economic Analysis (BEA), *Activities of U.S. Affiliates of Foreign Multinational Enterprises*, viewed on July 31, 2020, <https://www.bea.gov/data/intl-trade-investment/activities-us-affiliates-foreign-mnes>, and BEA, *National Income and Product Accounts*, Table 6.4D. Full-time and Part-Time Employees by Industry, viewed February 20, 2020, https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=3&isuri=1&nipa_table_list=193&categories=survey.

⁷⁷ U.S. Department of Commerce, “Notice on Section 232 National Investigation of Imports of Automobiles and Automotive Parts,” 83 *Federal Register* 24735, May 30, 2018.

⁷⁸ Doug Palmer and Megan Cassella, “U.S. allies warn of retaliation if Trump imposes auto tariffs,” *PoliticoPro*, July 19, 2018.

⁷⁹ U.S. Department of Commerce, “Statement from the Department of Commerce on Submission of Automobiles and Automobile Parts Section 232 Report to the President,” Press Releases, February 17, 2019.

⁸⁰ Eliana Johnson and Andrew Restuccia, “Trump Administration withholds report justifying ‘shock’ auto tariffs,” *PoliticoPro*, March 20, 2019; Doug Palmer, “Watchdog group sues for release of Commerce auto tariff report,” *PoliticoPro*, March 21, 2019.

⁸¹ Senator Toomey, “Toomey Leading Bipartisan Amicus Brief Supporting Lawsuit Seeking Release of Commerce Department’s 232 Auto Report,” March 7, 2020, https://www.toomey.senate.gov/?p=op_ed&id=2591.

investigation and potential tariffs as a tactical move by the Trump Administration to pressure trade negotiating partners.

To compel the Trump Administration to release the report, Congress included an amendment in the Consolidated Appropriations Act, 2020 (P.L. 116-93) mandating that Commerce publish the report in the *Federal Register* and that it submit to Congress any portion of the report that contains classified information.⁸² The Trump Administration did not comply, citing executive privilege and asserting that disclosure of the report “would risk impairing ongoing diplomatic efforts to address a national-security threat and would risk interfering with executive branch deliberations,” in apparent reference to negotiations with the EU and others ongoing at that time.⁸³ Several Members, including then-Senate Finance Chair Senator Grassley, objected to the Trump Administration’s refusal to release the report.⁸⁴ The Biden Administration has yet to release the report.

Bills introduced in the 116th Congress would have required a report by the USITC on the economic importance of domestic automotive manufacturing before the President could impose import restrictions on the sector (S. 121, H.R. 1710).

Implications of a 232 Action for U.S Automakers

The value of U.S. imports potentially covered under the Trump Administration investigation would have been significantly greater than that of steel and aluminum imports. In 2020, the United States imported more than 6.6 million vehicles, with a value of \$159 billion, and more than \$131 billion in auto parts. With complex global supply chains, industry dynamics such as the large number of foreign-owned auto manufacturing facilities in the United States, and the potential for further retaliation by trading partners if tariffs were to be imposed as a result of the investigation, the economic consequences could have been substantial. For example, the 1.5 million vehicles exported from the United States in 2020—with a value of \$47 billion—and \$67 billion in parts exports could have been targeted for retaliation by some trading partners, as could have the vehicle assembly plants of U.S.-controlled companies in overseas markets such as China and Europe. The Center for Automotive Research (CAR), a research and analysis group that studies issues affecting the automotive industry, estimated that a 25% tariff added to all imported vehicles and parts (including from Canada and Mexico) could raise the cost of U.S. vehicle assembly by 6%; if levied only against the post-Brexit EU, those costs would increase by less than 1%.

In its 2019 annual report, Ford Motor Company asserted that “steps taken by the U.S. government to apply or consider applying tariffs on automobiles, parts, and other products and materials have the potential to disrupt existing supply chains, impose additional costs on our business, affect the demand for our products, and make us less competitive. Further, other countries attempting to retaliate by imposing tariffs would increase the cost for us to import our vehicles into such countries.”

The automotive supply chain has been affected by steel and aluminum tariffs. According to CAR, U.S. vehicles and parts manufacturers account for 26% of U.S. steel consumption and

⁸² P.L. 116-93, Sec. 112.

⁸³ Steven A. Engel, Assistant Attorney General Office Legal Counsel, “Publication of a Report to the President on the Effect of Automobile and Automobile-Part Imports on the National Security,” January 17, 2020.

⁸⁴ “Grassley says he intends to ‘pursue’ release of Section 232 autos report,” *Inside U.S. Trade*, February 11, 2020; Doug Palmer, “Toomey blasts Commerce decision not to release auto report,” *PoliticoPro*, January 21, 2020; letter from New Democrat Coalition to Pres. Trump dated February 13, 2020.

31% of aluminum consumption. The American Automotive Policy Council, an industry trade group that represents the policy interests of Chrysler (a subsidiary of Stellantis N.V. since January 2021), Ford, and General Motors, has estimated that the Section 232 steel and aluminum tariffs added \$400 to the price of a new vehicle.

Notes: Mexico, Japan, Canada, South Korea, and Germany accounted for 90% of vehicles imported by the United States in 2020; nearly 40% of automotive parts were imported from Mexico, with China, Canada, Japan, Germany, and South Korea accounting for an additional 40% of imports. EU members alone (not including United Kingdom) in 2020 purchased 256,569 U.S.-made vehicles, worth \$10.8 billion. More than two-thirds of U.S. automotive parts exports were to Mexico and Canada. To illustrate the complexity of auto negotiations, see CRS In Focus IFI0835, *NAFTA Motor Vehicle Talks Reopen Old Trade Debate*, by Bill Canis.

Sources: U.S. Department of Commerce, International Trade Administration, *Automotive Trade Data*. Michael Schultz, et al., *U.S. Consumer & Economic Impacts of U.S. Automotive trade Policies*, Center for Automotive Research, February 2019, p. 26, <https://www.cargroup.org/wp-content/uploads/2019/02/US-Consumer-Economic-Impacts-of-US-Automotive-Trade-Policies-.pdf>. <https://shareholder.ford.com/investors/financials/annual-reports/default.aspx>. Michael Schultz, et al., *U.S. Consumer & Economic Impacts of U.S. Automotive trade Policies*, Center for Automotive Research, February 2019, pp. 24-25. Ryan Beene, “Auto industry unites to oppose Trump import tariffs,” *Automotive News*, March 29, 2019, <https://www.autonews.com/automakers-suppliers/auto-industry-unites-oppose-trump-import-tariffs>. Ford Motor Company, *2019 Annual Report, Form 10-K, For the Year Ended December 31, 2019*, p. 15.

Uranium⁸⁵

Unlike the self-initiated investigations into steel, aluminum, and auto imports, the Trump Administration opened two additional Section 232 investigations in response to industry petitions. In July 2018, Commerce launched a Section 232 investigation into uranium imports in response to a petition from two uranium producers (uranium mining and milling companies), and after consulting with industry, government officials, and a public comment period.⁸⁶ The petitioners, the uranium producers Energy Fuels and Ur-Energy, requested limiting imports to guarantee 25% of the U.S. nuclear fuel market for U.S. uranium producers, and “Buy American” provisions for government purchases of uranium to bolster the industry.⁸⁷

Compared to historical production, current uranium mining has become a relatively small-scale industry in the United States. The Energy Information Administration (EIA) reports U.S. production of uranium shrank to 1.6 million pounds in 2018, 33% less than 2017, and declined to 173,875 pounds in 2019.⁸⁸ For the fourth quarter of 2020, EIA reported it “could not publicly release data for U.S. production of uranium concentrate (U3O8) in the fourth quarter of 2020. Domestic uranium production has declined considerably in recent years, and activity did not reach a threshold where a specific production figure could be published without violating the protections that EIA has committed to provide.”⁸⁹

⁸⁵ CRS Analyst Lance Larson contributed to this section.

⁸⁶ Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce, “Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Uranium,” 83 *Federal Register* 35204, July 25, 2018.

⁸⁷ Energy Fuels, “Energy Fuels and Ur-Energy Jointly File Section 232 Petition with U.S. Commerce Department to Investigate Effects of Uranium Imports on U.S. National Security,” press release, January 16, 2018.

⁸⁸ Energy Information Administration (EIA), *Domestic Uranium Production Report - Quarterly*, February 13, 2020.

⁸⁹ Energy Information Administration (EIA), *Domestic Uranium Production Report - Quarterly*, February 22, 2021.

Kazakhstan accounted for approximately 42% of the world's production of uranium; Canada and Australia together supplied roughly a quarter of the world's production in 2019.⁹⁰ China made up 3.5% of worldwide uranium production in 2018.⁹¹

In April 2019, Commerce submitted its report to President Trump, determining affirmatively that uranium imports threaten to impair U.S. national security.⁹² In July, the President expressed concerns regarding national security, calling for a “fuller analysis of national security considerations with respect to the entire nuclear fuel supply chain.” The White House memorandum established a Nuclear Fuel Working Group, co-chaired by the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy, with representatives from other executive branch agencies. The working group was directed to “examine the current state of domestic nuclear fuel production to reinvigorate the entire nuclear fuel supply chain.”⁹³ In April 2020, the Department of Energy (DOE) released a report titled “Strategy to Restore American Nuclear Energy Leadership” containing policy recommendations to revive the domestic uranium industry and drive U.S. exports, among other recommendations.⁹⁴

Titanium Sponge

In March 2019, Commerce launched another Section 232 investigation in response to a petition from a U.S. titanium firm.⁹⁵ In explaining the investigation, the Commerce Secretary stated, “Titanium sponge has uses in a wide range of defense applications, from helicopter blades and tank armor to fighter jet airframes and engines.”⁹⁶

Titanium Metals Corporation (known as Timet) indefinitely idled production of titanium sponge at its Nevada facility in 2020, though it is unclear whether the company has permanently ceased sponge production in the United States.⁹⁷ Timet cited declining sales due to the COVID-19 pandemic as a reason.⁹⁸ The United Steelworkers urged Congress and the Trump Administration in 2020 to save the Timet facility from permanent closure, arguing that without capacity to produce titanium sponge domestically the national defense and critical infrastructure of the

⁹⁰ World Nuclear Association, *World Uranium Mining Production*, December 2020, <http://www.world-nuclear.org/information-library/nuclear-fuel-cycle/mining-of-uranium/world-uranium-mining-production.aspx>.

⁹¹ Ad Hoc Utilities Group, “Domestic Uranium Quotas Threaten America’s Economy, Energy, and Security”.

⁹² The White House, Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group, Presidential Memorandum, July 12, 2019, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-effect-uranium-imports-national-security-establishment-united-states-nuclear-fuel-working-group/>.

⁹³ Ibid.

⁹⁴ U.S. Department of Energy, “Strategy to Restore American Nuclear Energy Leadership,” April 23, 2020, <https://www.energy.gov/strategy-restore-american-nuclear-energy-leadership>. For more information on uranium enrichment, see CRS Report R45753, *The Front End of the Nuclear Fuel Cycle: Current Issues*, by Lance N. Larson and CRS In Focus IF11505, *Uranium Reserve Program Proposal: Policy Implications*, by Lance N. Larson.

⁹⁵ U.S. Department of Commerce, “Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Titanium Sponge,” 84 *Federal Register* 8503, March 8, 2019.

⁹⁶ U.S. Department of Commerce press release, March 2019, <https://www.commerce.gov/news/press-releases/2019/03/us-department-commerce-initiates-section-232-investigation-titanium>.

⁹⁷ Orla O’Sullivan, “Last U.S. Titanium Sponge Maker Exits: Timet Cites Covid-19, not Section 232 Denial,” *Metal Bulletin Daily*, September 15, 2020. Note that producers idle facilities so that they can be started if supported by market conditions.

⁹⁸ Gary Martin and Jonathan Ng, “Henderson TIMET Plant Workers Seeking Federal Help to Prevent Closure,” *The Las Vegas Review Journal*, August 3, 2020, <https://www.reviewjournal.com/local/henderson/henderson-timet-plant-workers-seeking-federal-help-to-prevent-closure-2087819/>.

United States would be compromised.⁹⁹ Timet was the sole producer in the United States after Allegheny Technologies, Inc (ATI) idled its titanium sponge production plant in Utah in 2016.¹⁰⁰

The United States Geological Survey (USGS) estimates that titanium sponge manufacturing employed 150 workers in 2020.¹⁰¹ For 2019 and 2020, the United States was more than 50% import-reliant for titanium sponge, down from 73% in 2018.¹⁰² In 2019, Japan was the biggest supplier of titanium sponge to the United States, accounting for 89% of sponge imports; Kazakhstan was the second-leading supplier, making up 10% of imported titanium sponge.¹⁰³ Although China was the world's largest producer of titanium sponge, producing 110 thousand tons in 2020, it is generally not considered an important source of sponge imports for the United States.¹⁰⁴ In its Section 232 petition, Timet voiced concern that without protection, the U.S. defense and aerospace industries could become dependent on titanium sponge imports from "risky" sources such as China or Russia. Furthermore, the company noted that China is not certified as a producer of premium grade titanium sponge used in rotating parts of jet engines.¹⁰⁵

Commerce submitted its report to President Trump in November 2019, but has not released it to Congress or to the public.¹⁰⁶ On February 27, 2020, President Trump announced that he agreed with the Commerce finding that titanium sponge imports threaten to impair national security and also with the Commerce recommendation not to adjust imports.¹⁰⁷ Similar to the uranium case, the White House memorandum established a working group, the Titanium Sponge Working Group (TSWG), in this case co-chaired by the Secretary of Defense and the Secretary of Commerce with heads from other executive branch agencies.¹⁰⁸ The TSWG is to develop recommendations to help ensure access to titanium sponge in the United States for use for national defense and in critical industries during an emergency. In December 2020, the TSWG issued a *Federal Register* notice seeking public comment to inform its deliberations.¹⁰⁹ The

⁹⁹ Letter from Thomas Conway, International President, United Steelworkers, to Honorable Donald J. Trump, President of the United States, September 21, 2020, <https://www.usw.org/blog/2021/march/20-09-21-USW-urges-administrative-action-to-protect-US-titanium-supply-chain.pdf>.

¹⁰⁰ Katie Benchina Olsen, "ATI Idles Utah Titanium Sponge Facility," *MetalMiner*, September 7, 2017; also see, USGS, *Titanium Minerals Yearbook*, January 2020, Table 2, p. 79.7., <https://prd-wret.s3-us-west-2.amazonaws.com/assets/palladium/production/atoms/files/myb1-2016-titan.pdf>.

¹⁰¹ USGS, *Titanium and Titanium Dioxide Mineral Commodity Summaries*, January 2021, <https://minerals.usgs.gov/minerals/pubs/commodity/titanium/>.

¹⁰² USGS, *Titanium and Titanium Dioxide Mineral Commodity Summaries*, January 2021, <https://pubs.usgs.gov/periodicals/mcs2021/mcs2021-titanium.pdf>.

¹⁰³ USGS, *Titanium Mineral Industry Surveys*, Fourth Quarter 2019, <https://www.usgs.gov/centers/nmic/titanium-statistics-and-information>.

¹⁰⁴ USGS, *Titanium and Titanium Dioxide Mineral Commodity Summaries*, January 2021, <https://minerals.usgs.gov/minerals/pubs/commodity/titanium/>.

¹⁰⁵ Petition of the Titanium Metals Corporation Under Section 232 of the Trade Expansion Act of 1962 for relief from Imports of Titanium Sponge that Threaten National Security, September 27, 2018, p.19, <https://www.timet.com/assets/local/documents/petition/Titanium-Sponge-232-Petition-Executive-Summary.pdf>.

¹⁰⁶ BIS, Section 232 Investigations: The Effects on Imports on National Security, <https://www.bis.doc.gov/index.php/other-areas/office-of-technology-evaluation-ote/section-232-investigations>.

¹⁰⁷ The White House, *Memorandum on the Effect of Titanium Sponge Imports on the National Security*, February 27, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-effect-titanium-sponge-imports-national-security/>.

¹⁰⁸ Bureau of Industry and Security, "Notice of Request for Public Comments by the Titanium Sponge Working Group," 85 *Federal Register* 79464-79466, December 10, 2020.

¹⁰⁹ Department of Commerce Bureau of Industry and Security, "Notice of Request for Public Comments by the Titanium Sponge Working Group," 85 *Federal Register* 79464, December 10, 2020.

working group is also to meet with counterpart agencies in Japan to “agree upon measures to ensure access to titanium sponge in the United States for use for national defense and critical industries in an emergency.”¹¹⁰ Furthermore, President Trump instructed the Secretary of Defense “to take all appropriate action... to increase access to titanium sponge for use for national defense and critical industries and to support domestic production capacity for the production of titanium sponge to meet national defense requirements.”¹¹¹

Transformers and Components¹¹²

On May 4, 2020, Commerce self-initiated a Section 232 investigation into whether imports of certain electrical transformers or their parts, including laminations and cores made of grain-oriented electrical steel (GOES), threaten to impair national security. The existing Section 232 steel tariffs included the expanded derivative products and do not cover GOES derivative products, which had raised concerns among some Members of Congress who called the tariffs insufficient. They also argue that some firms had avoided tariffs by increasing imports of such derivative products from Mexico and Canada, which do not presently face tariff restrictions.¹¹³ Canada contested the circumvention allegation in its submission to Commerce. Canadian officials claimed that the North American supply chain was highly integrated, and that Canadian component manufacturers source some GOES inputs from U.S. suppliers. Furthermore, they wrote, restriction of Canadian imports might “adversely affect” the integrated North American electrical grid shared by the United States and Canada.¹¹⁴ AK Steel, with manufacturing operations in Pennsylvania and Ohio, is currently the sole domestic GOES producer.¹¹⁵

GOES products are incorporated into transformers used in critical energy infrastructure. Risk assessments for the U.S. energy infrastructure have generally focused on threats and hazards that may disable or permanently damage large numbers of high-voltage electric-power transformers (LPTs) that are critical to the movement of electricity. Because LPTs require long lead times for their manufacture, transport, and installation, the loss of these systems for any reason may have severe long-term consequences for electric reliability. Experts have expressed increasing concern about the threat of coordinated cyberattacks through the nation's networked control systems that might significantly impair the nation's electric grid by damaging LPTs and other bulk-power equipment.¹¹⁶ Widely recognized cyber supply chain vulnerabilities may increase cybersecurity risks to the electricity subsector.¹¹⁷

¹¹⁰ The White House, *Memorandum on the Effect of Titanium Sponge Imports on the National Security*, February 27, 2020.

¹¹¹ Ibid.

¹¹² CRS Analyst Brian E. Humphreys contributed to this section.

¹¹³ Senator Portman, “Portman, Brown, Casey Ask President Trump to Prioritize Electrical Steel in Trade Remedy,” press release, March 8, 2018.

¹¹⁴ Government of Canada, *Comments By the Government of Canada to the U.S. Department of Commerce*, Request for Comment: The Effect of Imports of Laminations for Staked Cores for Incorporation Into Transformers, Stacked Cores for Incorporation Into Transformers, Wound Cores for Incorporation Into Transformers, and Transformer Regulators, An Investigation Under Section 232(B) of the Trade Expansion Act of 1962, as Amended U.S. Federal Register, Washington, DC, July 2, 2020, p. 15.

¹¹⁵ Representative Mike Kelly, “Reps. Kelly and Balderson Urge President Trump to Protect AK Steel, the Last Remaining U.S. Electrical Steel Producer,” press release, March 6, 2020.

¹¹⁶ For more information, see CRS Report R45312, *Electric Grid Cybersecurity*, by Richard J. Campbell.

¹¹⁷ For more information see, NIST Cyber Supply Chain Risk Management, <https://csrc.nist.gov/projects/cyber-supply-chain-risk-management>.

In 2016, the Federal Energy Regulatory Commission (FERC) directed the North American Energy Reliability Corporation (NERC) to develop a new reliability standard to address supply chain risk management issues affecting cybersecurity of bulk-power systems.¹¹⁸ The rule would require industry stakeholders to formalize cybersecurity risk management and implement more rigorous vetting of vendors and software, among other measures.¹¹⁹ In April 2020, FERC delayed implementation of the rule to October 1, 2020, due to COVID-19 contingencies.¹²⁰ In April 2021, the DOE issued a request for information related to cybersecurity risks in the grid supply chain.¹²¹

The U.S. Chamber of Commerce and National Foreign Trade Council advocated for use of AD/CVD to limit targeted imports rather than Section 232 action. There are currently duties assessed on transformer components imported from South Korea.

Commerce concluded its investigation and delivered its report to President Trump on October 16, 2020, but it has not been made public.¹²² In November 2020, the Trump Administration concluded consultations to address the transshipment of GOES. According to the then USTR, Mexico agreed to establish a monitoring system for exports of electrical transformer laminations and cores made of non-North American GOES to the United States. As a result, the Trump Administration stated that Mexico would not be subject to further Section 232 action.¹²³ No other action against other countries was taken.

Mobile Cranes¹²⁴

On May 19, 2020, Commerce initiated an investigation on imports of mobile cranes¹²⁵ on the basis of a petition filed by the Manitowoc Company, Inc.¹²⁶ In its December 2019 petition, the Wisconsin-based company asserted that lower-priced imports—particularly from Germany, Austria, and Japan—and intellectual property infringement¹²⁷—by a Chinese competitor—have

¹¹⁸ North American Electric Reliability Corporation (NERC), Implementation Plan, Project 2016-03 Cyber Security Supply Chain Risk Management Reliability Standard, July 2017, p. 2. NERC “is a not-for-profit international regulatory authority whose mission is to assure the effective and efficient reduction of risks to the reliability and security of the grid.... NERC is the Electric Reliability Organization (ERO) for North America, subject to oversight by the Federal Energy Regulatory Commission (FERC) and governmental authorities in Canada.” See NERC, “About NERC”, <https://www.nerc.com/AboutNERC/Pages/default.aspx>.

¹¹⁹ North American Electric Reliability Corporation, “Reliability Standards for the Bulk Electric Systems of North America,” June 23, 2020.

¹²⁰ U.S. Federal Energy Regulatory Commission, Order Granting Deferred Implementation of Certain NERC Reliability Standards, April 17, 2020, 171 FERC ¶ 61,052.

¹²¹ Department of Energy, “Revocation of Prohibition Order Securing Critical Defense Facilities,” 08483 *Federal Register*, April 22, 2021.

¹²² According to email from BIS Congressional Affairs to CRS on April 2, 2021.

¹²³ USTR, “USTR Statement on Successful Conclusion of Steel Negotiations with Mexico,” press release, November 5, 2020.

¹²⁴ CRS Specialist Bill Canis contributed to this section.

¹²⁵ Cranes are large machines that move heavy objects using a projecting beam. They are used to unload freight and place bridge sections over highways, and in construction and manufacturing applications. Cranes can be either stationary or mobile, with the latter mounted on wheels, crawler tracks, or trucks.

¹²⁶ Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce, “Notice of Request for Public Comments on Section 232 National Security Investigation of Imports of Mobile Cranes,” 83 *Federal Register* 31439, May 26, 2020.

¹²⁷ The International Trade Commission found in May 2015 that a Chinese crane manufacturer had violated Manitowoc patents and trade secrets with regard to certain crawler cranes and excluded them from entry into the United States. *In the Matter of Certain Crawler Cranes and Components Thereof*, Investigation No. 337-TA-887 1-4 (U.S. International

resulted in a 72% increase in imported cranes since 2014 and the closure of one of its two U.S. production facilities.¹²⁸

According to its petition, Manitowoc is the “dominant supplier of mobile cranes to the U.S. military and has a long history of Department of Defense contract awards, having supplied a wide number of rough-terrain and self-propelled cranes through the Defense Logistics Agency and through direct sales to all military branches of service.” The company asserts that in 2019, it was the U.S. military’s exclusive supplier of all-terrain and boom truck cranes, and supplied half of the rough terrain cranes used by the services. Manitowoc also said that its cranes are essential to “strengthen and maintain secure, functioning, and resilient critical infrastructure” within the United States.¹²⁹ At the time, Manitowoc sought the imposition of duties on some imported mobile cranes, though notably excluded imports of its own mobile cranes manufactured in Germany.

The crane industry was split in its views on the Manitowoc petition: other mobile crane manufacturers and some crane users support the petition, while others have argued against it.¹³⁰ Opponents to the Section 232 investigation, mostly those involved in crane rental, sales, and service, say that Kobelco and Tadano, two Japanese crane manufacturers that have invested in U.S. factories, make more reliable equipment with regards to safety, quality, service, and reliability, and are more competitively priced than their Manitowoc counterparts.¹³¹ One Texas crane importer asserted that Manitowoc has not invested in its plants or in innovation through research and development (R&D) since the early 1990s, so that demand for its product has diminished.¹³²

In August 2020, the company stated that it was no longer requesting tariffs as a remedy and that “the most effective remedy would be for the President to take concrete steps to stimulate demand.”¹³³ The firm later withdrew its petition and the investigation was halted.¹³⁴

Vanadium¹³⁵

On May 28, 2020, Commerce, in response to a petition, initiated an investigation to determine the effects on U.S. national security from imports of vanadium.¹³⁶ Vanadium is a metal used in the

Trade Commission).

¹²⁸ While the company headquarters and engineering remain in Wisconsin, its sole crawler crane manufacturing facility was moved in 2016 to Shady Grove, Penn. Manitowoc Company, Inc., *Petition of the Manitowoc Company, Inc. under Section 232 of the Trade Expansion Act of 1962 for the Relief from Imports of Mobile Cranes that Threaten National Security*, December 19, 2019.

¹²⁹ Ibid.

¹³⁰ D. Ann Shiffler, “Global crane community responds to Manitowoc petition for tariffs,” *International Cranes and Specialized Transport*, July 18, 2020, at <https://www.khl.com/international-cranes-and-specialized-transport/global-crane-community-responds-to-manitowocs-petition-for-tariffs/145129.article>.

¹³¹ Public comments of Scott Cummins, CEO of Scott Equipment Company, LLC, July 17, 2020, <https://www.regulations.gov/document?D=BIS-2020-0009-0008>.

¹³² Public comments of Don Udelson, President of G.P., Lift Source Machinery, LTD., <https://www.regulations.gov/document?D=BIS-2020-0009-0025>.

¹³³ D. Ann Shiffler, “New president said Manitowoc does not support tariffs on crane imports,” *American Cranes & Transport*, August 11, 2020.

¹³⁴ Isabelle Ico, “Commerce terminates Section 232 probe into mobile crane imports,” *Inside U.S. Trade*, December 4, 2020.

¹³⁵ CRS Analyst Brandon S. Tracy contributed to this section.

¹³⁶ Bureau of Industry and Security, Office of Technology Evaluation, U.S. Department of Commerce, “Notice of

production of metal alloys, and is designated a critical mineral by the Department of the Interior.¹³⁷ Vanadium is most often used as a strengthening agent for steel and is especially valued for its strength-to-weight ratio.¹³⁸ Uses potentially important for national security include the manufacture of components of aircraft, jet engines, ballistic missiles, and batteries for energy storage.¹³⁹ Vanadium is also used in the manufacture of steel alloys, which are commonly sold as steel plate, sheet, beams, bars, pipes, and tubes, among others, and can be used as a catalyst for the production of some acids. Other minerals can often serve as substitutes for vanadium.

AMG Vanadium (Cambridge, OH)¹⁴⁰ and U.S. Vanadium, LLC (Hot Springs, AR)¹⁴¹ filed the 232 petition. The petitioners assert that the U.S. vanadium industry is “adversely impacted by unfairly priced imports, limited exported markets due to value-added-tax regimes, and the distortionary effects of Chinese and Russian industrial policies.”¹⁴² AMG Vanadium and other U.S. producers of ferrovanadium are protected by antidumping orders on imports of ferrovanadium from China and South Africa that have been in place since 2003.¹⁴³

Opponents of the Section 232 investigation point out that there is no primary production of vanadium in the United States, and that both of the U.S. petitioners rely on secondary sources of vanadium, including imports of spent catalysts from oil refiners, fly ash from industrial boilers and power plants, and vanadium-bearing steelmaking slag.¹⁴⁴ Another U.S. manufacturer that uses vanadium pentoxide to produce ferrovanadium, objected to any Section 232 action because the limited production of vanadium pentoxide in the United States makes it necessary to rely on vanadium imports for its feedstock. The company suggested that if the investigation resulted in tariffs on all vanadium imports, it could critically reduce the amount of vanadium available for steelmaking.¹⁴⁵ Other downstream producers, including manufacturers of vanadium flow batteries

Request for Public Comments on Section 232 National Security Investigation of Imports of Vanadium,” 85 *Federal Register* 34179, June 3, 2020.

¹³⁷ Office of the Secretary, Interior, “Final List of Critical Minerals 2018,” 83 *Federal Register* 23295, May 18, 2018.

¹³⁸ U.S. Vanadium, LLC, <https://usvanadium.com>.

¹³⁹ “U.S. Secretary of Commerce Wilbur Ross Initiates Section 232 Investigation into Imports of Vanadium,” Press Release, June 2, 2020.

¹⁴⁰ AMG Vanadium reclaims spent steel refinery and other vanadium-bearing residues, which it converts to ferrovanadium as well as a ferronickel-molybdenum alloy that are marketed and sold to the carbon and stainless steel industries; AMG Vanadium, <https://amg-v.com/>.

¹⁴¹ U.S. Vanadium LLC is a processor of vanadium that makes high-purity vanadium oxides and downstream vanadium chemicals that it markets to the catalyst, chemical, titanium, and energy storage industries. U.S. Vanadium LLC, <https://usvanadium.com/news/f/us-vanadium-llc-announces-agreement-to-acquire-evraz-stratcor>.

¹⁴² Department of Commerce, “U.S. Secretary of Commerce Wilbur Ross Initiates Section 232 Investigation on Imports of Vanadium,” Press Release, June 2, 2020.

¹⁴³ International Trade Administration, Department of Commerce, “Notice of Antidumping Order: Ferrovanadium from the Republic of South Africa,” 68 *Federal Register* 4169, January 28, 2003, and “Notice of Amended Final Antidumping Duty Determination of Sales at Less than Fair Value and Antidumping Duty Order: Ferrovanadium from the People’s Republic of China,” 68 *Federal Register* 4168, January 28, 2003. In these antidumping orders, the scope included all ferrovanadium, but specifically excluded all vanadium additives, such as nitride vanadium, vanadium-aluminum master alloys, vanadium chemicals, vanadium oxides, vanadium waste and scrap, and vanadium-bearing raw materials (slag, boiler residues, and fly ash).

¹⁴⁴ Julie C. Mendoza et al., *Comments of Bushveld Minerals, Limited*, Morris, Manning & Martin LLP, Section 232 National Security Investigation of Imports of Vanadium, July 20, 2020, <https://www.regulations.gov/document?D=BIS-2020-0002-0013>.

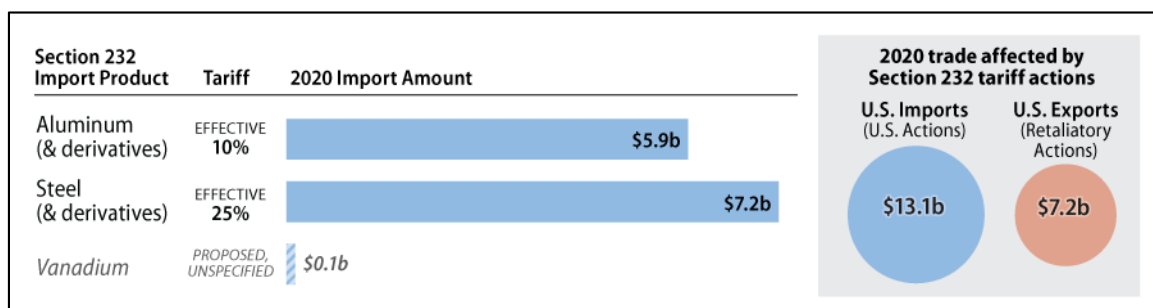
¹⁴⁵ Comments of David F. Carey, General Manager, Bear Metallurgical Company, July 20, 2020, <https://www.regulations.gov/document?D=BIS-2020-0002-0015>.

and of titanium mill products for the aerospace industry, also opposed the Section 232 measure.¹⁴⁶ Commerce concluded its investigation and delivered its report to President Biden on February 22, 2021; it has not been made public.¹⁴⁷ President Biden has until May 23, 2021, to act if there was an affirmative finding.

Section 232 Tariffs and International Trade¹⁴⁸

Increased U.S. tariffs on steel (25%) and aluminum (10%) under Section 232 currently affect \$13.1 billion of U.S. annual imports (**Figure 4**). The scale of imports affected by the actions fluctuated over the past several years with various changes by the Trump Administration since it first imposed the additional tariffs in March 2018. For example, in 2019, the Trump Administration exempted Canada and Mexico from increased tariffs on both metals—Canada and Mexico accounted for 40% of relevant U.S. steel and aluminum imports. In 2020, President Trump expanded the steel and aluminum tariffs to cover additional derivative products.¹⁴⁹ The Biden Administration is reviewing and could modify the various tariff increases enacted by the Trump Administration, including the existing Section 232 tariffs on steel and aluminum.¹⁵⁰ U.S. trading partners have responded to the U.S. tariff actions with retaliatory tariffs on approximately \$7.2 billion in U.S. annual exports (see “Retaliatory Tariffs”).

Figure 4. U.S. Trade Affected by Section 232 Tariffs in 2020
(U.S. dollars)



Source: CRS calculations with data from the U.S. Census Bureau sourced through Trade Data Monitor.

Notes: Based on annual 2020 trade values. Excludes exempted countries. The outcome of the Commerce Department’s Section 232 investigation on vanadium has not been publicly released, but if the investigation found such imports pose a threat to U.S. national security, the President would have until May 23, 2021, to determine the appropriate response. As a result of an April 2021 Court of International Trade (CIT) decision invalidating President Trump’s expansion of the Section 232 tariffs to cover certain steel-derivative products, CBP could

¹⁴⁶ See comments in <https://regulations.gov>, BIS-2020-0002.

¹⁴⁷ According to email from BIS Congressional Affairs to CRS on April 2, 2021.

¹⁴⁸ U.S. trade data cited throughout this section is from the U.S. Census Bureau accessed via Trade Data Monitor. Calculations based on products included in the Administration’s various tariff proclamations, and adjusted for exempted countries as noted.

¹⁴⁹ In April 2021, the Court of International Trade (CIT) determined that the presidential proclamation imposing the steel-derivative tariffs was “invalid as contrary to law.” It also held that one importer was entitled to a refund of any duties it had already paid on those products under the proclamation. For more information on the tariffs on derivative products and court challenges, please see “Proclamation Imposing Tariffs on Steel-Derivative Products”

¹⁵⁰ The outcome of the Commerce Department’s Section 232 investigation on vanadium has not been publicly released, but if the investigation found such imports pose a threat to U.S. national security, the President would have until late May 2021 to determine the appropriate response.

potentially refund duties that companies paid on the import of such products, lowering the total amount collected.

Steel and Aluminum Trade¹⁵¹

In 2020, total U.S. imports of steel and aluminum products covered by the Section 232 tariffs totaled \$16.5 billion and \$12.2 billion, respectively.¹⁵² Over the past decade, steel imports have fluctuated significantly, by value and quantity, while imports of aluminum generally increased through 2017 (see **Figure 5**). Compared to 2017, the year before the additional tariffs took effect, imports of both metals have decreased, by value and quantity, with particularly sharp declines in 2020 during the global pandemic and recession. Since 2017, steel imports have decreased 43.0% by value (-\$12.5 billion) and 43.6% by quantity (-15.0 million metric tons). Aluminum imports have decreased 30.2% by value (-\$5.3 billion), and 25.3% by quantity (-1.8 million metric tons).

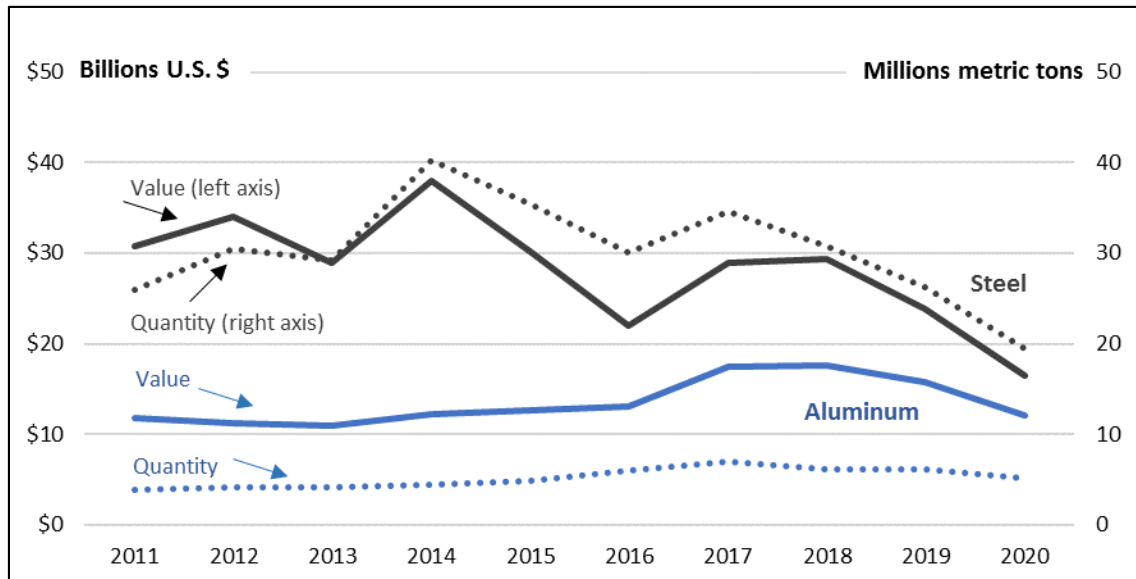
U.S. imports from individual countries have fluctuated since the tariffs went into effect (see **Appendix D**). When comparing 2020 trade data to 2017, the year before the tariffs took effect, the largest declines in U.S. steel imports were from the European Union (-\$2,411.8 million, -43.7%), South Korea (-\$1,272.4 million, -45.6%), Russia (-\$1,266.6 million, -86.7%), and Canada (-\$1,223.7 million, -23.6%), with no major trade partners seeing significant increases. The largest declines in aluminum imports were from Canada (-\$1,413.8 million, -20.1%), China (-\$1,277.9 million, -69.1%), Russia (-\$1,237.8 million, -75.8%), and the United Arab Emirates (-\$595.3 million, -42.8%). Aluminum imports increased by value from Turkey (+\$114.2 million, +227.2%), Saudi Arabia (+\$112.4 million, +75.9%), and South Korea (+\$102.5 million, +91.9%).

The countries with permanent exclusions from the tariffs accounted for 57.7% of U.S. steel imports and 51.6% of U.S. aluminum imports in 2020.¹⁵³

¹⁵¹ Data in this section from the U.S. Census Bureau accessed via Trade Data Monitor.

¹⁵² Figures include countries currently exempted from the Section 232 tariffs.

¹⁵³ Countries with permanent tariff exemptions for steel include Brazil, South Korea, Argentina, Australia, Canada and Mexico. Countries with permanent tariff exemptions for aluminum include Argentina, Australia, Canada and Mexico.

Figure 5. U.S. Steel and Aluminum Imports

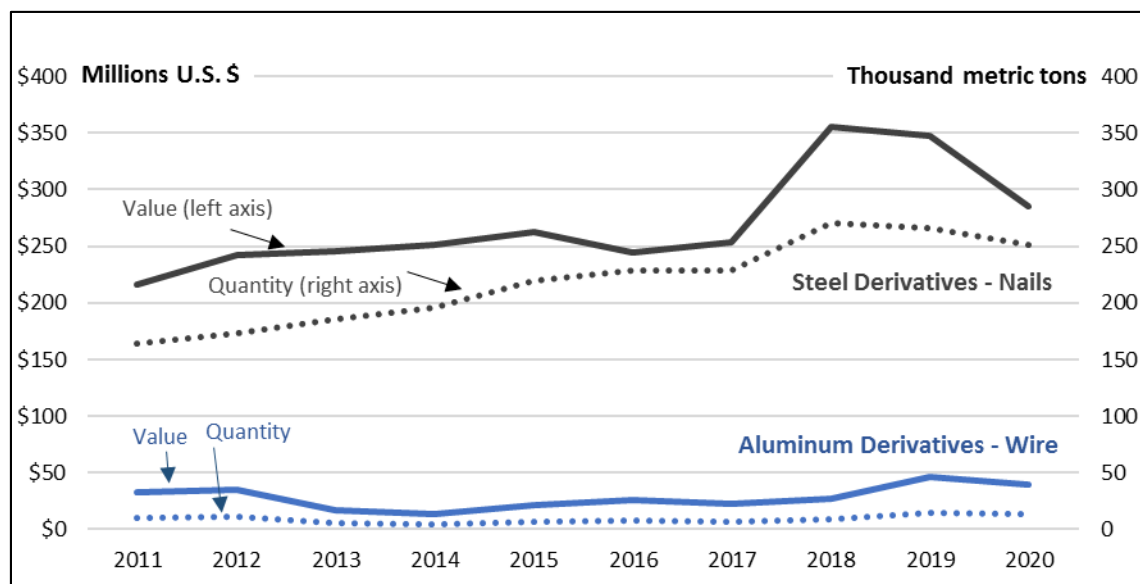
Source: CRS compiled from U.S. Census Bureau data, based on the HTS codes listed in the 2018 Section 232 proclamations.

Notes: Data includes U.S. imports from all trading partners, but does not include derivative products.

In February 2020, the Trump Administration declared that an increase in imports of certain derivatives of steel and aluminum were undermining the purpose of the Section 232 steel and aluminum actions.¹⁵⁴ In response, President Trump proclaimed tariffs on selected derivative products, namely steel nails and aluminum wire, as well as certain automobile bumpers and body stampings for tractors made of steel and aluminum. An examination of U.S. trade data shows that U.S. imports of both steel nails and aluminum wire increased from 2017 to 2019 (**Figure 6**).¹⁵⁵ For data on country-level trade on imports of steel, aluminum, derivative products, see **Appendix D**.

¹⁵⁴ President Trump, Proclamation 9980 of January 24, 2020, “Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles Into the United States,” <https://go.usa.gov/xHW5J>.

¹⁵⁵ Historic data on U.S. imports of bumpers (HTS 87081030) and body stampings for tractors (HTS 87082921) subject to the tariffs are not available, because only a portion of trade under these product categories is covered by the tariff actions. The USITC created two new 10HTS codes for the covered products and data are available from February 2020.

Figure 6. U.S. Imports of Select Derivative Products

Source: CRS compiled from U.S. Census Bureau data for HTS codes listed in Presidential Proclamation 9980 (January 24, 2020) on steel and aluminum derivative products.

Notes: U.S. imports, from all trading partners, of steel and aluminum derivative products identified in Presidential Proclamation 9980. Steel nails consist of HTS codes: 73170030, 7317005503, 7317005505, 7317005507, 7317005560, 7317005580, and 7317006560, and aluminum wire consists of HTS 76141050, 76149020, 76149040, and 76149050. Bumpers (HTS 87081030) and body stampings for tractors (HTS 87082921) were also included in the new derivatives tariffs, but historical data for the portion of these product categories covered by the tariffs are not available. As a result of an April 2021 Court of International Trade (CIT) decision invalidating President Trump's expansion of the Section 232 tariffs to cover certain steel-derivative products, CBP could potentially refund duties that companies paid on the import of such products.

Retaliatory Tariffs

As noted above, several major U.S. trading partners who are challenging the Section 232 actions on steel and aluminum in the WTO are imposing retaliatory tariffs (see **Figure 7**).¹⁵⁶ These tariffs are currently in effect on approximately \$7.2 billion of U.S. annual exports (2020 value).¹⁵⁷ The scale and scope of annual U.S. exports targeted for retaliation declined significantly in 2019 when Canada and Mexico withdrew their retaliation (covering U.S. exports of \$14.1 billion in 2019)

¹⁵⁶ 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/Supplement 2, May 22, 2019); Russia (G/L/1241, May 22, 2018), and in the notices published by the EU, Russia, India, and the UK on their own government websites. EU: European Commission, "Commission Implementing Regulation (EU) 2018/886," *Official Journal of the European Union*, June 20, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32018R0886>; Russia: Russian Federation, "Approval of rates of import duties in respect to certain goods from the United States," Decision no. 788, July 6, 2018, <http://publication.pravo.gov.ru/Document/View/0001201807060023>; India: Ministry of Finance (India), Notification no. 17, June 15, 2019, <https://www.cbic.gov.in/resources/htdocs-cbec/customs/cs-act/notifications/notfns-2019/cs-tarr2019/cs17-2019.pdf>; United Kingdom: Department of International Trade (UK), "UK Announces New Approach on US Tariffs," December 8, 2020, press release, <https://www.gov.uk/government/news/uk-announces-new-approach-on-us-tariffs>.

¹⁵⁷ U.S. exports are estimated using partner country import data in order to match trade values with retaliatory tariff lists.

following the Trump Administration's decision to exempt both countries from Section 232 steel and aluminum duties. In 2020, the EU slightly expanded its retaliation (covering additional U.S. exports of \$31.7 million), in response to the Trump Administration's decision to expand the U.S. steel and aluminum tariffs to derivative products.¹⁵⁸ The EU also planned to enact a second stage of retaliation from June 1, 2021, but suspended this action as part of U.S.-EU negotiations on global overcapacity of both metals.¹⁵⁹ If enacted, the second-stage EU tariffs would greatly increase the EU's retaliation, both in terms of the tariff levels (e.g., from 25% to 50% on whiskies) and in terms of products covered (roughly double the current value of trade affected).¹⁶⁰

Figure 7. Retaliatory Actions by U.S. Trading Partners, 2020

	U.S. Export	Effective Date	(Tariff)	Top U.S. Exports Affected by Retaliation	2020 Trade
 China	\$3.2b	April 2, 2018	(15-25%)	Aluminum, Pork, Nuts, Ethyl Alcohol, Fruits	
 EU	\$1.3b	June 22, 2018 ¹	(10-25%)	Steel, Whiskies, Beauty Products, Yachts, Motorcycles	
 India	\$1.2b	June 16, 2019 ²	(10-25%)	Nuts, Apples, Chemicals, Steel	
 Turkey	\$1.1b	June 21, 2018	(4-70%) ³	Coal, Petroleum Coke, Nuts, Kraft Paper, Polymers	
 UK	\$300m	June 22, 2018 ⁴	(10-25%)	Whiskies, Playing Cards, Beauty Products, Steel	
 Russia	\$200m	July 6, 2018 ⁵	(25-40%)	Motor Vehicles (Goods Transport), Dozers/Heavy Equipment, Optical Fibers, Taps, Cocks, Valves, Forklifts	

Source: CRS analysis of Trade Data Monitor trade data. Retaliatory tariff lists sourced from WTO notifications and partner country notifications. See footnote 156 for complete sourcing.

Notes: U.S. exports approximated by using partner country import data. Steel and aluminum are among the top exports facing retaliation by several U.S. trading partners as highlighted above. EU refers to the European Union and excludes the United Kingdom.

(1) The EU expanded its tariffs to additional products in May 2020 in response to new U.S. tariffs on steel and aluminum derivative products.

(2) Turkey temporarily increased its retaliatory tariffs up to 140% in August 2018 in response to the Trump Administration's tariff increase on Turkish steel to 50%, but in May 2019 both countries withdrew the additional increases.

(3) India's retaliatory tariffs were first announced in June 2018, but were repeatedly postponed until June 2019.

(4) When the United Kingdom began its independent trade regime in January 2021, it maintained the Section 232 retaliation scheme previously implemented from 2018 as part of the EU.

(5) Russia published its list of retaliatory tariff rates and products on July 6, 2018. The tariffs appear to have gone into effect within 30 days of the publication.

¹⁵⁸ European Commission, Commission Implementing Regulation (EU) 2020/502, April 6, 2020, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32020R0502&from=EN>.

¹⁵⁹ European Commission, "Joint EU-US Statement on Addressing Global Steel and Aluminum Excess Capacity," May 17, 2021, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2271>.

¹⁶⁰ See Annex II in European Commission, "Commission Implementing Regulation (EU) 2018/886," *Official Journal of the European Union*, June 20, 2018, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32018R0886>.

U.S. Steel and Aluminum Manufacturing and Employment

As discussed earlier (see “Commerce Findings and Recommendations”), a stated goal of the Trump Administration’s tariffs on metals was to spur U.S. producers of steel and aluminum to operate at an average of 80% or more of their production capacity. Commerce’s Section 232 reports deemed this as necessary to sustain adequate profitability, to reopen idled capacity, and to continue capital investment in both manufacturing sectors.¹⁶¹ Currently, domestic steel producers operate at 80% or less of production capacity (it was 65.1% in 2020, 77.1% in 2019, and about the same in 2018).¹⁶² Domestic producers of primary aluminum operated at an estimated 49% of production capacity in 2020, a drop from about 60% of capacity in 2019, and 55% in 2018.¹⁶³

Domestic Steel Manufacturing

U.S. raw steel production decreased to 72 million metric tons in 2020, compared to approximately 82 million metric tons in 2017, the year before the Section 232 trade action took effect.¹⁶⁴ According to the USGS, nationwide in 2020 three companies operated large integrated steel mills in eleven locations—once the chief method of producing steel in the United States—and 51 companies operated 98 minimills, which use electric arc furnaces to melt raw materials (primarily iron and recycled steel scrap metal) to produce steel in the United States.¹⁶⁵ The minimill sector has lower capital and energy costs and a largely nonunion workforce.¹⁶⁶

An effect of the steel tariff is that U.S. hot-rolled band steel prices initially rose, registering a 10-year high of more than \$1,000 per metric ton at the beginning of July 2018. Thereafter, the domestic price of steel generally began dropping, averaging around \$525 per metric ton in August 2020, which was lower than before the United States applied the steel tariff.¹⁶⁷ One reason for this initial drop was slowing global demand for steel products from major steel-using sectors, such as automotive, thus lessening the effect of the steel tariff. The COVID-19 pandemic has led to temporary production shutdowns and idling of some steelmaking furnaces in the United States.¹⁶⁸ The resulting supply-demand imbalance for steel has pushed current prices in the United States to the highest level since 2017. According to the steel pricing website, Steelbenchmarker, hot-rolled band steel in the United States sold at an average of \$1,490 per metric ton in April 2021 as compared with an average of about \$700 per metric ton in March 2017.¹⁶⁹ Analysts at IHSMarkit,

¹⁶¹ Steel Report, p. 4, and Aluminum Report, p. 107.

¹⁶² The U.S. Federal Reserve Board publishes industrial production and capacity utilization data by industry, accessed March 17, 2021, <https://www.federalreserve.gov/releases/G17/default.htm>.

¹⁶³ U.S. Geological Survey (USGS), *Mineral Commodity Summary*, Aluminum, February 2019, January 2020, and January 2021, <https://www.usgs.gov/centers/nmic/aluminum-statistics-and-information>.

¹⁶⁴ USGS, *Mineral Commodity Summary*, Iron and Steel, January 2021 and February 2019, <https://www.usgs.gov/centers/nmic/iron-and-steel-statistics-and-information>.

¹⁶⁵ *Ibid.*

¹⁶⁶ Matthew Miller and Wilson Ko, *Metals and Mining*, CFRA, January 2021, pp. 19-20.

¹⁶⁷ World Steel Dynamics, *Steelbenchmarker: Price History, Tables and Charts*, March 8, 2021, <http://steelbenchmarker.com/files/history.pdf>.

¹⁶⁸ Fabien Mercier, Valentina Burrai, and Tomohiro Hijioka, *Steel Market Developments Q4 2020*, OECD, 2020, pp. 52-3, <https://www.oecd.org/industry/ind/steel-market-developments-Q4-2020.pdf>.

¹⁶⁹ World Steel Dynamics, *Steelbenchmarker: Price History, Tables and Charts*, March 8, 2021, <http://steelbenchmarker.com/files/history.pdf>.

an industry research firm, attributed the rising price to idle capacity as demand rose; they also predict that as capacity that sat idle in 2020 restarts, supply should improve and prices should fall.¹⁷⁰

U.S. downstream industries that use steel to manufacture products have had to contend, at least for a time, with higher costs of inputs to production. Any domestic price increases may put U.S. exporters of products made of steel at a disadvantage as they compete against foreign rivals who may pay a lower price for steel in the global market when buying materials for production. In March 2021, with U.S. prices for hot-rolled band steel 36% above Europe and 106% above mainland China, producers may prefer purchasing imported steel even with the additional 25% tariff.¹⁷¹

The effect of tariffs on steel manufacturing jobs is difficult to measure. U.S. steelmakers directly employed 137,200 workers in 2020 (see **Figure 8**), accounting for 1.1% of the nation's 12.2 million factory jobs. Steel manufacturers added a total of 8,500 jobs in 2018 and 2019, up 6.2% from 2017. In 2020, the number of steel manufacturing jobs in the United States shrank 6% from the previous year.¹⁷² Thus, overall employment at steel mills is little changed from three years ago. The U.S. government expects steel industry employment to fall about 7% from 2019 to 2029.¹⁷³ What is not yet known and difficult to assess is the employment effect of increased input costs on other U.S. manufacturing industries that use steel intensively, such as manufacturers of automobiles and parts, household appliances, and farm machinery. The possible effects of the steel and aluminum tariffs on the automotive supply chain are discussed in the section "Automobiles and Parts." Beyond the various U.S. tariff actions over the years meant to protect the industry from foreign competition, employment in the steel industry has been affected by new technology, particularly the increased use of electric arc furnaces to make steel, which has reduced the demand for workers.¹⁷⁴ According to American Iron and Steel Institute (AISI), the number of labor hours needed to produce one finished ton of steel has fallen 81% since 1980, from 10.1 to 1.9 in 2019.¹⁷⁵ As a result, even a significant increase in domestic steel production is likely to result in a relatively small number of additional jobs. In the past two years, a few steel plant expansions have been realized or announced, and some blast furnaces have reopened.¹⁷⁶ In April 2021, U.S. Steel announced it was canceling a large industrial investment to modernize its operations in western Pennsylvania.¹⁷⁷ As of May 2021, the company has not said whether it

¹⁷⁰ IHS Markit, *Steel Markets in Turmoil, with Record Prices and Rationing*, March 16, 2021, <https://connect.ihsmarkit.com/Document/Show/phoenix/3919638>.

¹⁷¹ World Steel Dynamics, *Steelbenchmarker: Price History, Tables and Charts*, March 8, 2021, <http://steelbenchmarker.com/files/history.pdf>.

¹⁷² Bureau of Labor Statistics (BLS), *Current Employment Statistics (CES)*, Iron and Steel Mills (NAICS 3311) and Steel Products (NAICS 3312), accessed March 8, 2021, <https://www.bls.gov/ces/>.

¹⁷³ BLS, *Employment and Output by Industry*, Table 2.7, September 1, 2020, <https://www.bls.gov/emp/tables/industry-employment-and-output.htm>.

¹⁷⁴ See CRS In Focus IF10902, *Trade Actions and U.S. Steel Manufacturing*, for a related discussion on the domestic steel industry.

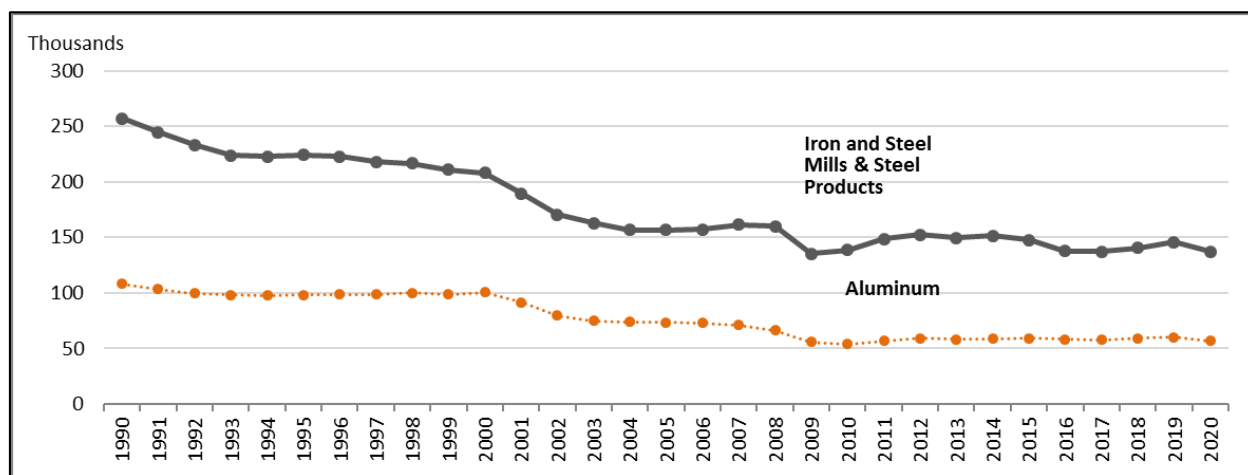
¹⁷⁵ American Iron and Steel Institute (AISI), *2019 Annual Statistical Report (ASR)*, August 12, 2020, p.15, <https://www.steel.org/2020/08/2019-statistical-report/>.

¹⁷⁶ Joseph S. Pete, "U.S. Steel Restarts Blast Furnace #4 at Gary Works as Conditions Recover," *NWITIMES*, December 1, 2020 Updated March 15, 2021, https://www.nwitimes.com/business/local/u-s-steel-restarts-blast-furnace-4-at-gary-works-as-conditions-recover/article_61b32de8-143e-5cf7-9eef-0d9a7cada5dd.html.

¹⁷⁷ U.S. Steel is an American integrated steel producer headquartered in Pittsburgh, Pennsylvania. The company has production operations in North America and Europe. David Burritt, Christie Breves, and Rich Fruehauf, *First Quarter 2021 Earnings Call*, U.S. Steel, April 30, 2021, p. 10, <https://investors.ussteel.com/events-and->

plans to bring back furnaces idled during the pandemic or to add more workers.¹⁷⁸ In contrast, some steelmakers, such as Nucor, are expanding or are constructing new facilities.¹⁷⁹

Figure 8. 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).

Domestic Aluminum Manufacturing

Domestic production of primary aluminum has risen over the past three years, reaching 1.0 million metric tons in 2020, up from 741,000 metric tons in 2017, which was the lowest level since 1951.¹⁸⁰ At the end of 2020, three companies operated six primary aluminum smelters in the United States, compared with five companies that operated nine primary aluminum smelters in 2010.¹⁸¹ In April 2020, Alcoa, the largest domestic producer, announced that it would curtail its Intalco aluminum smelting facility in Ferndale, WA, which reduced U.S. production of primary aluminum by 230,000 metric tons.¹⁸² The action suggests that the 10% tariff has not been enough of a factor to allow Alcoa to maintain its current domestic capacity or to reopen curtailed capacity. Century Aluminum, the main proponent of the tariff and chiefly a domestic producer, has restarted some of its U.S. production capacity since the imposition of the tariff, but it has not led to a substantial rebuild of its domestic production of primary aluminum.¹⁸³

presentations/default.aspx.

¹⁷⁸ Joe Deaux, "Biden's Rust Belt Revival Plan Risks Luring More Foreign Steel," *Chicago Tribune*, April 2, 2021, <https://www.chicagotribune.com/business/ct-biz-biden-infrastructure-steelmakers-20210402-e5nj64xcvfecbnz2uyzy7ae43y-story.html>.

¹⁷⁹ As one example, AK Steel's plant in Ashland, KY, closed permanently at the end of 2019. See, AK Steel, *2019 Annual Report*, Form-10K, Fiscal Year Ended December 31, 2019, p. 29. As another example, Nucor plans to build a new plate mill in Brandenburg, KY, which it expects to complete in late 2022. See, Nucor, *2020 Annual Report*, Form-10K, Fiscal Year Ended December 31, 2020, February 26, 2021, pp. 3 and 7, <https://www.nucor.com/reports-filings/#>.

¹⁸⁰ USGS, *Mineral Commodity Summary*, Aluminum, January 2011 and January 2021, <https://www.usgs.gov/centers/nmic/aluminum-statistics-and-information>.

¹⁸¹ Ibid.

¹⁸² Alcoa, *2020 Annual Report*, Form 10-K, For the Year Ended December 31, 2020, February 25, 2021, p. 39, <https://investors.alcoa.com/sec-filings/default.aspx>.

¹⁸³ Century Aluminum, *2020 Annual Report*, Form 10-K, For the Year Ended December 31, 2020, March 4, 2021, pp.

U.S. production of aluminum accounted for a relative small fraction of the world's primary aluminum production at 1.5% in 2020, whereas China constituted more than half.¹⁸⁴ A prominent source of imported aluminum for the United States is Canada, which was exempted from the aluminum tariff after negotiations in mid-May 2019.¹⁸⁵ As discussed earlier, Argentina, Australia, and Mexico also gained exemptions from the 10% tariff as are individual product imports that receive a product exclusion from Commerce.

One aim of the 10% tariff was to raise the price of imported aluminum as a way to encourage domestic manufacturers to restart idled capacity and increase hiring. In 2020, the average spot price of primary aluminum ingot produced in the United States was \$1,976 per metric ton, or 16% higher than the London price (the global price of aluminum).¹⁸⁶

Aluminum manufacturers directly employed 56,900 workers in 2020, 700 fewer than in 2017, and shrinking by 2,200 jobs from 2015 (see **Figure 8**).¹⁸⁷ Similar to the trend in steelmaking, the U.S. Bureau of Labor Statistics (BLS) expects employment in aluminum manufacturing to further shrink, falling 7% by 2029.¹⁸⁸ A reason for this is that domestic smelting of aluminum from bauxite ore, which requires large amounts of electricity, has been in long-term decline for multiple reasons. Secondary aluminum produced from recycled scrap melted in a smelter now accounts for the majority of domestic aluminum production.¹⁸⁹ Secondary aluminum production, which has been fairly steady over the past two decades, accounted for three-fourths of U.S. aluminum production in 2020, and the United States was the world's second largest producer of secondary aluminum after China.¹⁹⁰ Imports of secondary unwrought aluminum are not covered by the Section 232 aluminum trade action.¹⁹¹

Another development affecting aluminum is the implementation by the Department of Commerce's International Trade Administration (ITA) of the aluminum import monitoring and analysis (AIM) system, "to track imports of aluminum products and provide an early warning system for import surges."¹⁹² The aluminum program is similar to the import monitoring and analysis system for steel administered by ITA's Enforcement and Compliance unit.¹⁹³ The AIM system is set to launch in June 2021, and has garnered the support of several Members.¹⁹⁴ Both

1-2, <https://centuryaluminum.com/investors/filings-and-financials/annual-reports-and-proxy/default.aspx>.

¹⁸⁴ USGS, *Mineral Commodity Summary*, Aluminum, January 2021.

¹⁸⁵ The Section 232 U.S. aluminum tariffs on Canada and Mexico applied from June 1, 2018 to May 19, 2019. On August 6, 2020, President Trump re-imposed the tariff on some aluminum imports from Canada and then issued a proclamation lifting the tariffs in October 27, 2020 retroactive to September 1, 2020.

¹⁸⁶ USGS, *Aluminum Mineral Industry Surveys*, Table 6, December 2020.

¹⁸⁷ (BLS), *Current Employment Statistics (CES)*, Alumina and aluminum production (NAICS 3313), accessed March 8, 2021, <https://www.bls.gov/ces/>.

¹⁸⁸ BLS, *Employment and Output by Industry*, Table 2.7, September 1, 2020.

¹⁸⁹ See CRS In Focus IF11787, *U.S. Aluminum Manufacturing: National Security and Tariffs*, for a related discussion on the domestic aluminum industry.

¹⁹⁰ Secondary aluminum can be substituted for primary aluminum in most uses, although primary aluminum is favored in some applications, such as electronics or aerospace manufacturing.

¹⁹¹ 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.

¹⁹² See Aluminum Import Monitoring and Analysis (AIM) System, <https://www.trade.gov/updates-aluminum-import-licensing>.

¹⁹³ See Steel Import Monitoring and Analysis (SIMA) System, <https://enforcement.trade.gov/steel/license/index.html>.

¹⁹⁴ Letter to House Appropriations Committee from Representatives Bueschon and Stevens, "Support the Aluminum Import Monitoring (AIM) System."

the American Primary Aluminum Association (APAA), a group representing two chiefly primary aluminum producers Century and Magnitude 7 Metals, and the Aluminum Association, the industry's broadest trade group representing Alcoa and others in the industry's value chain, support the expeditious launch and implementation of AIM.¹⁹⁵

Global Production Trends

Tariffs to protect the domestic steel industry do not address the underlying and longstanding issue of global overcapacity. The steel committee of the Organization for Economic Co-operation and Development (OECD) forecasts global steel overcapacity of 703.8 million metric tons in 2020, up 24% from 2019.¹⁹⁶ Although China is the world's largest steel producer, accounting for roughly 55% of global production in 2020,¹⁹⁷ relatively little Chinese steel enters the U.S. market directly, due to extensive U.S. AD/CVD duties, but the large amount of Chinese production depresses prices globally. Between 2019 and 2023, China could add 208.57 million metric tons per year of new crude steel capacity, with closures totaling 170.92 million metric tons per annum over the same period, according to S&P Global Platts. Platts' estimate suggests China's net crude steel capacity may expand by 37.65 million metric tons a year through 2023.¹⁹⁸

USTR noted China's government's role in excess capacity in its annual report stating:

In manufacturing industries such as steel and aluminum, China's economic planners have contributed to massive excess capacity in China through various government support measures. For steel, the resulting over-production has distorted global markets, harming U.S. manufacturers and workers in both the U.S. market and third country markets, where U.S. exports compete with Chinese exports....

Excess capacity in China hurts various U.S. industries and workers not only through direct exports from China to the United States, but also through its impact on global prices and supply, which makes it difficult for competitive manufacturers throughout the world to remain viable.¹⁹⁹

In March 2021, China's National Development and Reform Commission and the Ministry of Industry and Information Technology published a notice it will analyze steel capacity reduction that "will focus on the inspection of the implementation of steel capacity reduction work and the implementation of rectification in all relevant regions since 2016."²⁰⁰ It is not clear if the report or analysis will be made public or what specific policy changes or actions China may take as a result. In addition, according to a press report, Chinese authorities have begun employing various tactics to rein in steel production, such as imposing environmental fines on older polluting

¹⁹⁵ See American Primary Aluminum Association, "U.S. Primary Aluminum Industry Lauds Import Monitoring Program; Calls for Immediate Action to Address Current Canadian Surge," press release, May 2020, <https://www.prnewswire.com/news-releases/us-primary-aluminum-industry-lauds-import-monitoring-program-calls-for-immediate-action-to-address-current-canadian-surge-301051925.html> and The Aluminum Association, "Newly Launched Aluminum Import Monitoring Program Critical to Trade Enforcement," press release, January 4, 2021, <https://www.aluminum.org/news/newly-launched-aluminum-import-monitoring-program-critical-trade-enforcement>.

¹⁹⁶ Fabien Mercier, Valentina Burrai, and Tomohiro Hiijkata, *Steel Market Developments Q4 2020*, OECD, 2020, p. 51, <https://www.oecd.org/industry/ind/steel-market-developments-Q4-2020.pdf>.

¹⁹⁷ USGS, *Mineral Commodity Summary*, Iron and Steel, January 2021.

¹⁹⁸ Matthew Miller and Wilson Ko, *Metals and Mining*, CFRA, January 2021, p. 14.

¹⁹⁹ U.S. Trade Representative, *2021 National Trade Estimate Report on Foreign Trade Barriers*, March 2021, p. 100, <https://ustr.gov/sites/default/files/files/reports/2021/2021NTE.pdf>.

²⁰⁰ Brett Fortnam, "China orders analysis, reduction of crude steel production," *Inside U.S. Trade*, April 2, 2021.

factories, though it is unclear how effective they will be in lowering overall production and excess capacity.²⁰¹

No OECD or other multinational forum has been established to monitor global aluminum overcapacity, though aluminum industry groups have called for such a forum.²⁰² Although China accounted for more than half of the world's primary aluminum production in 2020, it does not export aluminum in commodity form to the United States.²⁰³ China ships semi-finished aluminum such as bars, rods, and wire to the United States. These imports are subject to the Section 232 tariffs.²⁰⁴ APAA is the main proponent of the Section 232 tariffs.²⁰⁵ The Aluminum Association opposes the Section 232 tariff program, instead favoring a country-specific approach.²⁰⁶

Metals imports should be put in the context of U.S. production. In 2020, the United States produced more than three times the amount of steel it imported.²⁰⁷ According to Commerce, import penetration—the share of U.S. demand met by steel imports—averaged 24.5% in 2019, down from 28.3% in 2018, from 22.7% in 2009.²⁰⁸ Some segments of the domestic steel industry, such as slab converters, import a sizable share of their semi-finished feedstock from foreign suppliers, totaling 5.1 million tons in 2020.²⁰⁹ In the primary aluminum market, U.S. net import reliance fell to 13% in 2020 from 53% in 2016, according to USGS.²¹⁰ Most U.S. foreign trade in steel and aluminum is with Canada (see “Steel and Aluminum Trade”).

International Efforts to Address Overcapacity

OECD analysis has found that ongoing global steel overcapacity and excess production are largely caused by government intervention, subsidization, and other market-distorting practices, although these are not the only factors.²¹¹ 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.

Previous U.S. Administrations worked to address the issue of steel overcapacity. President George W. Bush, for example, initiated international discussions on global capacity reduction and improved trade disciplines in the steel industry as part of his general steel announcement of

²⁰¹ Thomas Hale and Christian Shepherd, “China struggles to rein in steel production,” *The Financial Times*, April 12, 2021.

²⁰² OECD, “Measuring Distortions in International Markets: the Aluminum Value Chain,” *OECD Trade Policy Papers*, January 8, 2019, p. 48, https://www.oecd-ilibrary.org/trade/measuring-distortions-in-international-markets-the-aluminium-value-chain_c82911ab-en.

²⁰³ USGS, *Mineral Commodity Summaries*, Aluminum, January 2021, p. 2.

²⁰⁴ CRS In Focus IF11787, *U.S. Aluminum Manufacturing: National Security and Tariffs*.

²⁰⁵ APAA, “APAA Congratulates President-Elect Biden and Calls for the Preservation of the Section 232 Aluminum Tariffs,” press release, January 13, 2021, <https://www.prnewswire.com/news-releases/apaa-congratulates-president-elect-biden-and-calls-for-the-preservation-of-the-section-232-aluminum-tariffs-301207595.html>.

²⁰⁶ The Aluminum Association, “Aluminum Association Calls for Targeted, Multilateral Approach to Address Aluminum Subsidies and Overcapacity,” press release, January 14, 2021, <https://www.aluminum.org/news/aluminum-association-calls-targeted-multilateral-approach-address-aluminum-subsidies-and>.

²⁰⁷ USGS, *Mineral Commodity Summaries*, Iron and Steel, January 2021.

²⁰⁸ DOC, ITA, *Steel Imports Report: United States*, Global Steel Trade Monitor, May 2020, p. 5.

²⁰⁹ DOC, ITA, Enforcement & Compliance, *U.S. Steel Import Monitor*, <https://www.trade.gov/data-visualization/sima-import-monitor>.

²¹⁰ USGS, *Mineral Commodity Summaries*, Aluminum, January 2021.

²¹¹ 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>.

2001.²¹² Other 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 this effort 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.²¹³ 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.²¹⁴ 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.²¹⁵

In September 2018, the OECD Forum agreed on a process to identify and remove subsidies and take other measures to reduce the global steel overcapacity. The OECD issued a consensus report outlining six principles and specific policy recommendations to address excess steel capacity.²¹⁶ The former USTR under the Trump Administration, while supportive of the recommendations, questioned the Forum’s ability to pursue effective implementation and did not rule out unilateral action.²¹⁷ Some Members have expressed support of U.S. participation in the Forum and other global coalitions to address overcapacity.²¹⁸ Despite calls from international steel industry associations and most Forum members, including the United States, the G-20 was unable to overcome objections by China to extend the Forum’s mandate past November 2019.²¹⁹ However, the Chair noted that a large majority of members agreed to continue and USTR stated that it “will continue to work with like-minded partners to seek long-term solutions” to global overcapacity.²²⁰ During the OECD Steel Committee’s latest meeting in September 2020, the parties discussed the impact of the COVID-19 pandemic and countries’ related trade actions on steel trade flows.²²¹

The aluminum industry argues it is also suffering because of China’s excess production of primary aluminum. According to the aluminum associations of Japan, Europe, Canada, and the United States, global overcapacity amounted to 11 million metric tons in 2017. A June 2019

²¹² President George W. Bush, Statement by the President Regarding a Multilateral Initiative on Steel, June 5, 2001, <https://georgewbush-whitehouse.archives.gov/news/releases/2001/06/20010605-4.html>.

²¹³ 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>.

²¹⁴ European Commission, *Steel: Commission Welcomes New Global Forum to Tackle Root Causes of Overcapacity*, December 16, 2016, http://europa.eu/rapid/press-release_IP-16-4435_en.pdf.

²¹⁵ 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>.

²¹⁶ Global Forum on Excess Steel Capacity, Ministerial Report, September 20, 2018.

²¹⁷ The U.S. Trade Representative, “USTR Statement on Meeting of the Global Forum on Steel Excess Capacity,” USTR Press Releases, September 2018.

²¹⁸ Senators Portman, Brown, Braun, and Casey, “Portman, Brown, Braun, Casey Urge USTR to Prioritize Extension of the Global Forum on Steel Excess Capacity,” October 24, 2019.

²¹⁹ G-20 Chair, Japanese Ministry of Economy, “Trade and Industry, Ministerial Meeting on the Global Forum on Steel Excess Capacity (GFSEC) Held,” October 26, 2019, https://www.meti.go.jp/english/press/2019/1026_001.html.

²²⁰ USTR, “USTR Statement on Meeting of the Global Forum on Steel Excess Capacity,” October 26, 2019.

²²¹ <http://www.oecd.org/industry/ind/88th-session-of-the-steel-committee.htm>.

OECD report found that subsidies, especially in China and the countries of the Gulf Cooperation Council, and other market-distorting practices impact global competition in the aluminum industry.²²² As noted, the U.S. Aluminum Association and some of its international counterparts seek to establish a global forum to address aluminum excess capacity. In an April 2021 policy document, *A Trade Policy Framework for the U.S. Aluminum Industry*, the Aluminum Association, among other policy recommendations, urged the Biden Administration to engage in multilateral efforts to address unfair industrial policies, especially in China, as it views overcapacity in the global aluminum market as a major challenge.²²³

The Trump Administration's Section 232 actions have led multiple U.S. trading partners, such as the EU, the UK, and Canada, to initiate their own safeguard investigations and quota restrictions to prevent dumping of steel and aluminum exports and protect domestic industries. Unlike the OECD efforts, the individual country safeguard actions are uncoordinated.

In addition to the Section 232 action, the Trump Administration pursued joint action on industrial overcapacity in other forums. The then-USTR met with EU and Japanese counterparts in May 2018, 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.”²²⁴ The parties also agreed to cooperate on their concerns with third parties' technology transfer policies and practices²²⁵ and issued a joint statement containing a list of factors that identify if market conditions for competition exist.²²⁶ In January 2020, the three parties issued a statement with specific recommendations and proposed reforms to strengthen the existing WTO Agreement on Subsidies and Countervailing Measures (ASCM) rules.²²⁷ Some analysts suggested that the UK might join the trilateral effort. China opposes several of the proposed ASCM reforms.²²⁸ With the Biden Administration's emphasis on working with allies to address issues with China, it is expected to continue with the trilateral efforts.²²⁹

The G-7 Trade Ministers also agreed to “discuss the impact market-distorting practices, such as harmful industrial subsidies, including those causing excess capacity in some sectors, are having on our economies and chart a way to address these collectively.”²³⁰

In addition, in November 2018, the United States, the EU, Japan, Argentina, and Costa Rica put forward a joint proposal in the WTO to increase transparency, proposing incentives for

²²² OECD (2019), “Measuring Distortions in International Markets: the Aluminum Value Chain”, *OECD Trade Policy Papers*, No. 218, OECD Publishing, Paris, <https://doi.org/10.1787/c82911ab-en>.

²²³ The Aluminum Association, *A Trade Policy Framework for the U.S. Aluminum Industry*, April 6, 2021, p. 2, https://www.aluminum.org/sites/default/files/TAA_Trade%20Framework-FINAL.pdf.

²²⁴ U.S. Trade Representative, “Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union,” May 2018.

²²⁵ *Ibid*, Annex Statement 2, Joint Statement on Technology Transfer Policies and Practices.

²²⁶ *Ibid*, Annex Statement 3, Joint Statement on Market Oriented Conditions.

²²⁷ U.S. Trade Representative, “Joint Statement on Trilateral Meeting of the Trade Ministers of Japan, the United States and the European Union,” January 14, 2020.

²²⁸ Statement by Zhang Xiangchen, China's Ambassador and Permanent Representative to the WTO, July 15, 2020.

²²⁹ U.S. Congress, Senate Committee on Finance, *Hearing to Consider the Nomination of Katherine C. Tai, of the District of Columbia, to be United States Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary*, 117th Cong., February 25, 2021.

²³⁰ UK Government, “G7 Trade Ministers' Meeting – Chair's Statement,” March 31, 2021, <https://www.gov.uk/government/news/g7-trade-ministers-meeting-chairs-statement>.

compliance or penalties for noncompliance with WTO notification reporting requirements regarding subsidies.²³¹

The Biden Administration may continue the efforts to pursue new subsidy and transparency rules in the WTO. U.S. unilateral tariff actions, however, may limit other countries' willingness to participate or support U.S. reform proposals in multilateral forums. How the Biden Administration decides to act on the Section 232 tariffs, whether to retain, withdraw or amend them, may influence the actions and attitudes of individual U.S. trading partners, potentially impacting the likelihood for coordinated action, whether at the trilateral or multilateral level. Preparations for the planned WTO November 2021 Ministerial meeting may provide an opportunity to revisit debate on the proposed WTO reforms.

Policy and Economic Issues

Section 232 tariffs on steel and aluminum imports into the United States 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, and consumers. Some companies have challenged President Trump's actions through domestic litigation,²³² and may also seek alternative markets for their own products to avoid U.S. tariffs.

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 broader global issues, including steel and aluminum overcapacity, if their exports are subject to U.S. tariffs. U.S. trading partners' responses to Section 232 actions have 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.

Domestic Court Challenges

President Trump's actions under Section 232 resulted in legal challenges in the U.S. domestic court system. Specifically, the Section 232 actions on steel and aluminum have been challenged in cases before the U.S. Court of International Trade (CIT). In one case, Severstal Export GmbH, a U.S. subsidiary of a Russian steel producer, sought a preliminary injunction from the CIT to prevent the United States from collecting the import tariffs on certain steel products.²³³ The company and its Swiss affiliate argued that the President acted outside of the authority delegated by Congress because the tariffs were not truly imposed for national security purposes.²³⁴ The court denied the motion, determining that the plaintiffs were unlikely to prevail on the merits of their challenge.²³⁵ According to the case docket, the parties agreed to dismiss the case in May 2018.

²³¹ "Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements," JOB/GC/204, November 1, 2018.

²³² See, e.g., *Am. Inst. for Int'l Steel, Inc. v. United States*, No. 18-00152 (Ct. Int'l Trade filed June 27, 2018); *Severstal Exp. GmbH v. United States*, No. 18-00057 (Ct. Int'l Trade May 3, 2018) (order granting joint stipulation of dismissal).

²³³ See *Severstal Export GmbH v. United States*, No. 18-00057, 2018 WL 1705298, at *2 (Ct. of Int'l Trade April 5, 2018).

²³⁴ See *ibid.* at *9.

²³⁵ See *ibid.* at *10. Another case filed in December 2019 against the steel and aluminum tariffs challenges the

In another case, which was heard by a three-judge panel of the CIT, the American Institute for International Steel (AIIS), a trade association, challenged the constitutionality of Congress's delegation of authority to the President under Section 232.²³⁶ The plaintiffs argued that "Congress created an unconstitutional regime in section 232, in which there are essentially no limits or guidelines on the trigger or the remedies available to the President, and no alternative protections to assure that the President stays within the law, instead of making the law himself."²³⁷

On March 25, 2019, the CIT issued an opinion rejecting the plaintiffs' arguments that Congress delegated too much of its legislative power to the President in Section 232 in violation of the Constitution's separation of powers established.²³⁸ In granting the United States' motion for judgment on the pleadings, the CIT held that it was bound by a 1976 Supreme Court precedent determining that Section 232 did not amount to an unconstitutional delegation because it established an "intelligible principle" to guide presidential action.²³⁹ One member of the three-judge panel, Judge Katzmman, wrote separately to express his significant concerns about the ruling without openly dissenting.²⁴⁰ Judge Katzmman wrote that he was bound to follow Supreme Court precedent and uphold the delegation, but questioned whether the nondelegation doctrine retained any significant meaning if a delegation as broad as that in Section 232 was permissible.²⁴¹ On appeal, the U.S. Court of Appeals for the Federal Circuit (Federal Circuit) affirmed the CIT's decision, agreeing that the case was controlled by the Supreme Court precedent that "declare[d] section 232 not to violate the nondelegation doctrine."²⁴² AIIS asked the Supreme Court to review the Federal Circuit's decision, but in June 2020, the Court declined to hear the case, denying AIIS's petition for a writ of certiorari.²⁴³

Later, the CIT issued a preliminary decision in a case in which U.S. importers of Turkish steel alleged that President Trump's increase of the Section 232 steel tariffs from 25% to 50% on U.S. imports from Turkey did not have a sufficient national security rationale, did not follow statutory procedural mandates, and violated the plaintiffs' Fifth Amendment Due Process rights because the action "creates an arbitrary distinction between importers of steel products from Turkey and importers of steel products from all other sources."²⁴⁴ In a decision denying the United States' motion to dismiss the company's complaint in *Transpacific Steel LLC v. United States*, the CIT

executive branch's alleged failure to meet Section 232's statutory requirements, and its purportedly overbroad interpretation of "threat to national security" in Section 232. Complaint at 14-17, *Universal Steel Prods., Inc. v. United States*, No. 19-00209 (Ct. Int'l Trade Dec. 3, 2019). In February 2021, the court granted the government's motion for judgment on the pleadings, holding that: (1) the Section 232 steel report was not a final agency action subject to judicial review under the Administrative Procedure Act; (2) the President's determination that the imports threatened national security was unreviewable; and (3) the duration of the tariffs did not violate Section 232. Opinion and Order at 9-28, *Universal Steel Prods., Inc. v. United States*, No. 19-00209 (Ct. Int'l Trade Feb. 4, 2021).

²³⁶ *Am. Inst. for Int'l Steel, Inc. v. United States*, 376 F. Supp. 3d 1335, 1337 (Ct. Int'l Trade 2019), *aff'd*, No. 2019-1727, 2020 WL 967925 (Fed. Cir. February 28, 2020).

²³⁷ Memorandum in Support of Plaintiffs' Motion for Summary Judgment, at 3-4, *Am. Inst. for Int'l Steel, Inc. v. United States*, No. 18-00152 (Ct. Int'l Trade July 19, 2018).

²³⁸ *Am. Inst. for Int'l Steel*, 376 F. Supp. 3d at 1344-45.

²³⁹ *Ibid.* at 1340-41 (citing *Fed. Energy Admin. v. Algonquin SNG Inc.*, 426 U.S. 548, 559-60 (1976)).

²⁴⁰ *Ibid.* at 1345 (Katzmann, J., *dubitante*).

²⁴¹ *Ibid.* at 1352.

²⁴² *Am. Inst. for Int'l Steel, Inc. v. United States*, No. 2019-1727, 2020 WL 967925, at *1 (Fed. Cir. February 28, 2020).

²⁴³ *Am. Inst. for Int'l Steel, Inc. v. United States*, No. 19-1177, 2020 U.S. LEXIS 3353, at *1 (S. Ct. June 22, 2020). See also Sarah Martinson, "Steel Importers Take National Security Tariff Fight To Justices," *Law360*, March 25, 2020.

²⁴⁴ Complaint at 1-3, *Transpacific Steel LLC v. United States*, No. 19-00009 (Ct. Int'l Trade January 17, 2019).

indicated that the President's power to impose tariffs under Section 232, while broad, is not unlimited.²⁴⁵ Specifically, the court suggested that the President must closely adhere to the procedural requirements of the statute when exercising such authority.²⁴⁶ The court also determined that the company raised a plausible argument that the Executive violated constitutional guarantees of equal protection protected by the Fifth Amendment's Due Process Clause when imposing, without a rational basis, the additional steel tariffs only on imports from Turkey.²⁴⁷ In a July 2020 opinion, the CIT ruled that the President violated Section 232's mandated procedures and the Fifth Amendment's Equal Protection guarantees when issuing the proclamation doubling the tariffs on steel imports from Turkey.²⁴⁸

The decision in *Transpacific Steel* indicates that courts might scrutinize whether the executive branch has followed the proper procedures, including meeting statutory deadlines, when exercising Section 232 authority.²⁴⁹ Presidential action that does not follow these statutory procedures may be deemed in excess of the President's authority.²⁵⁰

Companies have also had some success challenging the government's denial of an exclusion request. U.S. importers have challenged the Department of Commerce's exclusion process for Section 232 tariffs. In *JSW Steel, Inc. v. United States*, the plaintiff argued that Commerce's failure to grant the company's products an exclusion from the steel tariffs violated the Administrative Procedure Act. The company asserted that the Agency improperly determined the U.S. market could furnish the products "in a sufficient quantity or quality on a timely basis to replace the steel slab [the plaintiff] currently imports."²⁵¹ According to the case docket, on August 5, 2020, the CIT remanded the case to the Department of Commerce, instructing the agency to (1) supplement the administrative record that it relied upon when denying the company's exclusion requests, and (2) to reconsider its decisions on those requests. In September 2020, the federal government settled the case with JSW, agreeing to refund the duties paid on the items that would have benefited from an approved exclusion request without admitting liability.²⁵²

Although plaintiffs have had some success in challenging the denial of individual requests, in March 2021, the CIT rejected a broad constitutional challenge to the tariff exclusion process.²⁵³ The court held that the Department of Commerce could grant tariff exclusions on imports of a particular metal product only to those companies that requested the exclusion without violating the Uniformity Clause of the Constitution.²⁵⁴

²⁴⁵ *Transpacific Steel LLC v. United States*, 415 F. Supp. 3d 1267, 1276 (Ct. of Int'l Trade 2019).

²⁴⁶ *Ibid.* at 1275–76.

²⁴⁷ *Ibid.* at 1270.

²⁴⁸ Opinion at 22, *Transpacific Steel LLC v. United States*, No. 19-00009 (Ct. of Int'l Trade July 14, 2020).

²⁴⁹ See *ibid.* at 1276.

²⁵⁰ See *ibid.*

²⁵¹ Complaint at 13-14, *JSW Steel, Inc. v. United States*, No. 19-00133 (Ct. Int'l Trade July 30, 2019).

²⁵² Confidential Order, *JSW Steel, Inc. v. United States*, No. 19-00133 (Ct. Int'l Trade Sept. 21, 2020).

²⁵³ Opinion at 21, *Thyssenkrupp Materials NA Inc. v. United States*, No. 20-00093 (Ct. Int'l Trade Mar. 10, 2021).

²⁵⁴ *Id.* The court also dismissed the plaintiff's claims that the exclusion process reflects an unlawful interpretation of the President's tariff proclamations. *Id.* The Uniformity Clause requires that "all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. CONST. art I, § 8, cl. 1.

Proclamation Imposing Tariffs on Steel-Derivative Products

As noted, in a January 2020 proclamation, President Trump expanded the steel and aluminum tariffs to cover derivative products (e.g., steel nails, tacks, drawing pins, and stranded wire).²⁵⁵ On February 4, 2020, a U.S. importer of steel-derivative products sued the United States in the CIT, seeking a temporary restraining order preventing CBP from collecting the additional duties.²⁵⁶ The company argued that the imposition of the tariffs failed to follow required statutory procedures; occurred after the statutory deadline for action; and violated the company's constitutional rights, among other things.²⁵⁷ On February 13, 2020, with the consent of both parties, a judge issued an order enjoining CBP from collecting the additional duties and requiring the plaintiff-company to post a bond for the duties until the CIT reaches a final judgment on the merits of the plaintiff's complaint.²⁵⁸ In February 2021, the court dismissed all but one of the company's claims: that the presidential proclamation is invalid because it was issued after the statutory deadline for action.²⁵⁹ In April 2021, the CIT granted the plaintiff's motion for summary judgment on this claim, determining that the untimely presidential proclamation was "invalid as contrary to law."²⁶⁰

WTO Cases

The U.S. imposition of tariffs on certain imports of steel and aluminum products,²⁶¹ as well as Commerce's exemption of certain WTO members' products from such tariffs, may also have implications for the United States under WTO agreements. As an example, 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.²⁶² Under WTO dispute settlement rules, members must first attempt to settle their disputes through consultations. If consultations fail, the member initiating a dispute may request the establishment of a dispute settlement panel composed of trade experts to determine whether a country has violated WTO rules.²⁶³ In October 2018, China requested the

²⁵⁵ Presidential Proclamation 9980 of January 24, 2020, Adjusting Imports of Derivative Aluminum Articles and Derivative Steel Articles into the United States, 85 *Federal Register* 5281 (January 29, 2020).

²⁵⁶ Motion for Temporary Restraining Order at 1-6, *PrimeSource Bldg. Prods., Inc. v. United States*, No. 20-00032 (February 4, 2020).

²⁵⁷ *Id.*

²⁵⁸ Order at 1-3, *PrimeSource Bldg. Prods., Inc. v. United States*, No. 20-00032 (February 13, 2020).

²⁵⁹ *PrimeSource Bldg. Prods., Inc. v. United States*, 2021 WL 276338, *1 (Ct. Int'l Trade Jan. 27, 2021).

²⁶⁰ *PrimeSource Bldg. Prods., Inc. v. United States*, 2021 Ct. Intl. Trade LEXIS 36, *12-13 (Ct. Int'l Trade Apr. 5, 2021). Several other companies have also filed cases at the CIT challenging the President's January 2020 Proclamation imposing tariffs on steel- and aluminum- derivative products. *See, e.g.*, Complaint at 19-25, *J. Conrad Ltd. v. United States*, No. 20-00052 (Ct. Int'l Trade Mar. 2, 2020); Complaint at 17-23, *Aslanbas Nail & Wire Co. v. United States*, No. 20-00049 (Ct. Int'l Trade Feb. 26, 2020). In June 2020, the court denied the plaintiffs' motions for temporary restraining orders and preliminary injunctions against implementation of the proclamation in the *J. Conrad* case, stating that the plaintiffs could not demonstrate the likelihood of irreparable harm from the proclamation. Slip op. at 2, *J. Conrad Ltd. v. United States*, No. 20-00052 (Ct. Int'l Trade June 1, 2020).

²⁶¹ 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 Brandon J. Murrill.

²⁶² Request for Consultations by China, *U.S.—Certain Measures on Steel and Aluminum Products*, WT/DS544/1 (Apr. 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.

²⁶³ 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), however that Body stopped

formation of such a panel.²⁶⁴ Other WTO members have requested consultations with the United States, or have joined existing requests, and panels have been composed to hear the cases (see **Figure 9**).

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 rules on international trade in goods.²⁶⁵ In particular, China alleged that the measures violate 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.²⁶⁶ 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., the so-called most-favored-nation treatment principle).²⁶⁷ China also maintained that the Section 232 tariff measures are "in substance" a safeguard measure intended to alleviate injury to a domestic industry from increased quantities of imported steel that compete 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.²⁶⁸

The United States has invoked the so-called national security exception in GATT Article XXI in defense of the steel and aluminum tariffs. GATT Article XXI states, in relevant part, that the GATT²⁶⁹ will not

be construed ... (b) to prevent any [member country] from taking any action which it considers necessary for the protection of its essential security interests

functioning as of December 11, 2019, when it lost its quorum, see CRS Legal Sidebar LSB10385, *The WTO's Appellate Body Loses Its Quorum: Is This the Beginning of the End for the "Rules-Based Trading System"?*, by Brandon J. Murrill. 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.

²⁶⁴ Items proposed for consideration at the next meeting of the Dispute Settlement Body, WTO/AIR/DSB/70, Oct. 19, 2018.

²⁶⁵ General Agreement on Tariffs and Trade 1994 (GATT) art. II.

²⁶⁶ 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).

²⁶⁷ *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."

²⁶⁸ *Request for Consultations* at 2.

²⁶⁹ 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.

- (i) relating to fissionable materials or the materials from which they are derived;
- (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.

While some analysts argue that a WTO panel may evaluate whether a WTO member's use of the national security exception falls within one of the three provisions listed above, 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 to evaluate whether the WTO member's use of the exception is proper.²⁷⁰ 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.²⁷¹

In April 2019, a WTO panel interpreted the national security exception in Article XXI of the GATT for the first time. In *Russia—Measures Concerning Traffic in Transit*, the panel determined that it had jurisdiction to review whether a member's actions were justified under Article XXI's national security exception and whether the member satisfied the requirements for invoking the exception.²⁷² As of December 11, 2019, however, the WTO's Appellate Body lost its quorum of three members necessary for the Body to decide appeals of WTO dispute settlement panel decisions and issue final reports.²⁷³ Because of this, the Dispute Settlement Body (DSB) (i.e., the committee composed of all WTO members that oversees the dispute settlement mechanism) can no longer adopt panel reports in line with the WTO's Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).²⁷⁴ Consequently, unless WTO members agree to consider unadopted dispute reports as final, the DSB cannot oversee the losing member's implementation of a panel ruling or authorize the prevailing member to engage in trade retaliation if the losing member ignores the dispute panel's recommendations. Thus, even if the United States or one of its trading partners prevails in a dispute over the Section 232 or retaliatory tariffs, there are significant doubts as to whether the ruling would be enforceable under WTO procedures.

Prior to December 2019, if one of the WTO panels had rendered an adverse decision against the United States, the United States would be expected to remove the tariffs, generally within a

²⁷⁰ 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 (Feb. 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]").

²⁷¹ 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).

²⁷² Report of the Panel at ¶¶ 8.1(d)(i)-(iv), *Russia—Measures Concerning Traffic in Transit*, WT/DS512/R (Apr. 5, 2019).

²⁷³ Alan H. Price, Real WTO Reform Now Possible With Demise of Appellate Body, BLOOMBERG LAW (Dec. 20, 2019). For more on this issue, see CRS Legal Sidebar LSB10385, *The WTO's Appellate Body Loses Its Quorum: Is This the Beginning of the End for the "Rules-Based Trading System"?*, by Brandon J. Murrill.

²⁷⁴ WTO Dispute Settlement Understanding art. 16, https://www.wto.org/english/tratop_e/dispu_e/dsu_e.htm#16.

reasonable period of time, or face the possibility of paying compensation to the complaining member or be subject to certain countermeasures allowed under the rules.²⁷⁵ Such countermeasures might include the complaining member imposing higher duties on imports of selected products from the United States.²⁷⁶ Nonetheless, several trading partners have already imposed retaliatory duties on selected U.S. exports without awaiting the outcome of a dispute settlement proceeding.²⁷⁷

In turn, the United States has argued that unilateral imposition of tariffs in response to the U.S. Section 232 measures cannot be justified under WTO rules.²⁷⁸ On July 16, 2018, the United States filed its own WTO complaints over the retaliatory tariffs imposed by five countries (Canada, China, the EU, Mexico, and Turkey) in response to U.S. actions; in late August 2018, it filed a similar case against Russia;²⁷⁹ and in July 2019, it filed a similar case against India.²⁸⁰ Canada, Mexico, and the United States withdrew their cases regarding the Section 232 tariffs and corresponding retaliatory measures in May 2019 when the parties agreed to settle the disputes.²⁸¹ Dispute settlement panels have been composed to hear the other cases, but, as noted, there are questions about the viability of the WTO's dispute settlement system because the Appellate Body has suspended its operations. According to the WTO's website, WTO panels will delay issuing final reports in these disputes (and the original disputes brought against the United States) until the second half of 2021 because of the global COVID-19 pandemic.

²⁷⁵ 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 violative 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 a dispute over compliance issues. *Id.* art. 21.5. The WTO Appellate Body hears appeals of these compliance panel reports. *Id.* art. 17.1.

²⁷⁶ *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.*

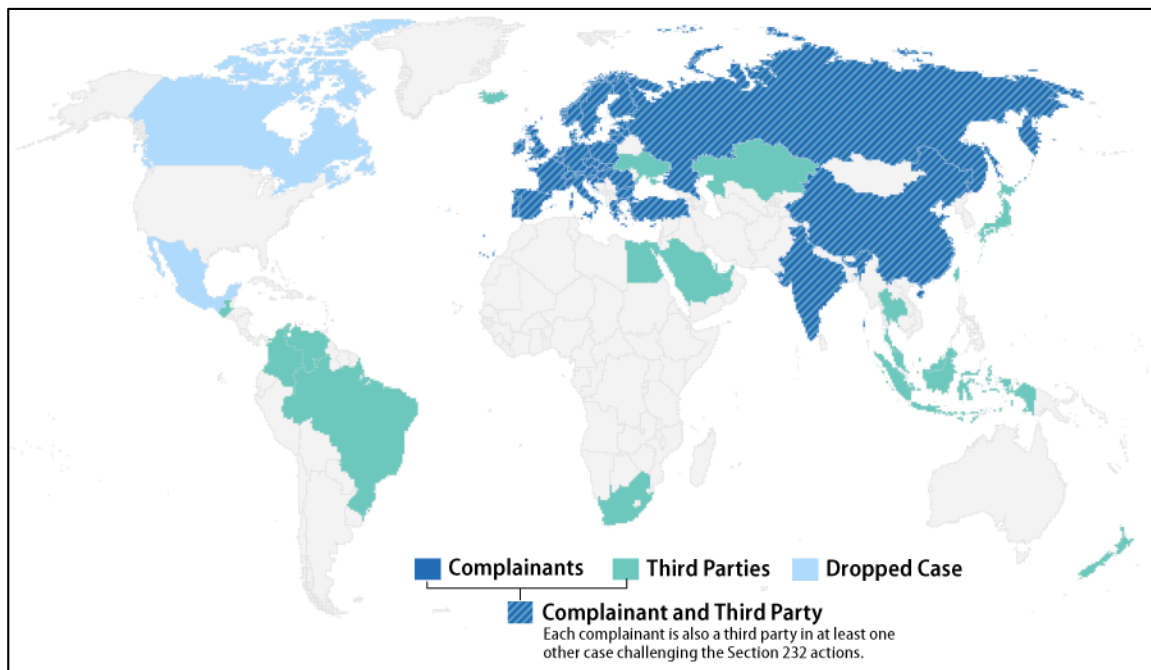
²⁷⁷ Charles Hutzler, *China Retaliates Against Trump Tariffs with Duties on American Meat and Fruit*, WALL STREET J. (April 1, 2018), <https://www.wsj.com/articles/china-retaliates-with-new-tariffs-on-u-s-meat-and-other-products-1522618533>.

²⁷⁸ *See, e.g.*, 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 (Apr. 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.").

²⁷⁹ USTR, "United States Challenges Five WTO Members Imposing Illegal Tariffs Against U.S. Products," press release, July 2018, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/july/united-states-challenges-five-wto>.

²⁸⁰ *Request for Consultations at 1-2, India—Additional Duties on Certain Products from the United States*, WT/DS585/1 (July 4, 2019).

²⁸¹ Notification of a Mutually Agreed Solution, *Mexico—Additional Duties on Certain Products from the United States*, WT/DS560/4 (June 3, 2019); Notification of a Mutually Agreed Solution, *United States—Certain Measures on Steel and Aluminum Products*, WT/DS551/13 (June 3, 2019); Notification of a Mutually Agreed Solution, *Canada—Additional Duties on Certain Products from the United States*, WT/DS557/4 (May 27, 2019); Notification of a Mutually Agreed Solution, *United States—Certain Measures on Steel and Aluminum Products*, WT/DS550/13 (May 27, 2019).

Figure 9. WTO Cases Challenging the United States' Section 232 Actions

Source: CRS based on WTO filings.

Notes: The UK is included as a member of the EU for cases filed prior to January 31, 2020. Independent of the EU, the UK has not been a complainant or third party in the WTO Section 232 disputes.

Retaliation

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.²⁸² Increased tariffs are permitted under these agreements, under specific circumstances, including for example, national security considerations, which the Trump Administration argued was the basis for its Section 232 actions. Other tariff increases allowed under these agreements include antidumping tariffs, countervailing duties, and safeguard tariffs.²⁸³

²⁸² 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>.

²⁸³ Antidumping duties are imposed when a domestic industry is materially injured, or threatened with material injury, by sales found to be at less than fair value in the U.S. market; countervailing duties are imposed when a domestic industry is materially injured, or threatened with material 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, *Safeguards: 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.

Retaliatory actions have magnified the effects of U.S. Section 232 tariffs. From an economic perspective, retaliation increases the scope of industries affected by the tariffs. U.S. agricultural exports, for example, are among the largest categories of U.S. exports targeted for retaliation, which may have contributed to reduced sales of certain U.S. farm products.²⁸⁴

Retaliatory actions may also heighten concerns over the potential strain the U.S. 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 have initiated WTO dispute settlement proceedings against the United States, while the Trump Administration viewed the actions within its rights under those same commitments (see “WTO Cases”). The retaliating countries notified their retaliation to the WTO pursuant to the WTO Agreement on Safeguards, arguing that U.S. steel and aluminum tariffs are intended to protect U.S. industry and therefore are effectively safeguard tariffs.²⁸⁵ The Trump Administration argued, in turn, that the retaliation violates WTO rules, as it has not been authorized by a WTO dispute settlement panel, and responded by initiating additional WTO disputes. If the WTO dispute settlement process cannot satisfactorily resolve this conflict, it could lead to further unilateral actions and increasing retaliation. The Biden Administration has not yet stated a position on the ongoing WTO cases.

Economic Impacts

The Section 232 steel and aluminum tariffs and resulting retaliation affect various stakeholders in the U.S. economy, prompting reactions from several Members of Congress, some in support and others voicing concern. Congress has held a number of hearings to examine the issue since the tariffs were enacted.²⁸⁶ Press reports, company earnings statements, government data, and academic studies have suggested the U.S. steel and aluminum tariffs raised the tariff inclusive cost of imports leading to declining demand for U.S. imports of the products subject to the tariffs, which allowed domestic steel and aluminum producers to increase domestic prices and expand output for a time.²⁸⁷ In turn, downstream domestic industries (e.g., manufacturers using steel and aluminum as inputs) and consumers have likely faced higher costs than they would have without the tariffs in place.²⁸⁸ Trade data suggest other countries’ retaliatory tariffs have also had negative effects on U.S. industry by reducing demand for certain U.S. exports (see “Retaliation”).

Most studies assessing the tariffs’ overall economic impact estimate a negative effect on U.S. gross domestic product (GDP) (see “Aggregate Effects on the U.S. Economy”). Some groups supporting the tariff actions, however, argue that potential negative effects on the broader economy are exaggerated and that such effects are outweighed by the benefits to the domestic

²⁸⁴ For more information, see CRS Report R45903, *Retaliatory Tariffs and U.S. Agriculture*, by Anita Regmi.

²⁸⁵ For example, see European Union, “United States – Certain Measures on Steel and Aluminum Products Request for the Establishment of a Panel by the European Union,” WTO WT/DS48/14, October 19, 2018.

²⁸⁶ See, for example, 115th Congress, the House Ways and Means Committee held hearings examining the potential economic implications of the tariffs and the product exclusion process, and its Trade Subcommittee held a hearing on the effects on U.S. agricultural producers. The Senate Finance Committee also held a hearing during the 115th Congress with Commerce Secretary Ross to discuss the Administration’s Section 232 investigations and the potential impacts of Section 232 auto tariffs. In the 116th Congress, the House Committee on Financial Services held a hearing on the impact of recent trade policies on the U.S. economy.

²⁸⁷ Sources cited throughout this section. For an overview of the estimated effects of the tariffs on the U.S. economy, see Congressional Budget Office, *The Budget and Economic Outlook: 2020 to 2030*, January 28, 2020, p. 33, <https://www.cbo.gov/system/files/2020-01/56020-CBO-Outlook.pdf>.

²⁸⁸ Mary Amiti, Stephen J. Redding, and David E. Weinstein, “The Impact of the 2018 Tariffs on Prices and Welfare,” *Journal of Economic Perspectives*, vol. 33, no. 4 (Fall 2019), pp. 188-189.

steel and aluminum industries in any case.²⁸⁹ Over the past year, the global pandemic and recession caused major disruptions to both supply and demand for many industrial goods making it difficult to separate the effect of the tariffs from broader economic shifts.

Industry-Level 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. Several industry-level dynamics that occurred after the increase in steel and aluminum tariffs are described below. Tariffs, however, are only one of many variables influencing market conditions.

- **Tariffs raise the costs of imports relative to domestic goods, which may have given domestic steel and aluminum producers the ability to raise prices, at least temporarily, relative to foreign competitors.** Both foreign and domestic producers may respond to increased tariffs. Domestic firms are likely to increase their prices in response to the new tariff protection, while foreign producers may lower their prices and absorb a portion of the tariff increase in order to remain competitive in the U.S. market.²⁹⁰ Foreign producers' response determines the tariff "pass-through" rate, and most early economic studies of the tariff actions found that the U.S. Section 232 tariffs had largely been passed through to downstream industries and consumers with little effect on foreign export prices.²⁹¹ A more recent study, however, found that foreign steel producers absorbed some share of the tariff increases, potentially lowering their export prices by as much as 50%.²⁹²

BLS data on domestic producer and import price indices for broad categories of steel and aluminum suggest that price differences between domestic and imported steel and aluminum increased after the Section 232 tariffs took effect in March 2018. For steel, the domestic producer price index increased by 20.5% from January to December 2018, while the price index for imports (excluding tariffs) increased by 8.5% (see **Figure 10**). By the end of 2019, after Canada and Mexico were exempted from the additional duties, domestic and imported steel

²⁸⁹ See for example: Jeff Ferry, *Steel & Aluminum Tariffs Produce Minimal Impact on Jobs, GDP*, Coalition for a Prosperous America, March 2018, https://www.prosperousamerica.org/steel_aluminum_tariffs_produce_minimal_impact_on_jobs_gdp; and Robert E. Scott, *Aluminum Tariffs Have Led to a Strong Recovery in Employment, Production, and Investment in Primary Aluminum and Downstream Industries*, Economic Policy Institute, December 11, 2018, <https://www.epi.org/publication/aluminum-tariffs-have-led-to-a-strong-recovery-in-employment-production-and-investment-in-primary-aluminum-and-downstream-industries/>.

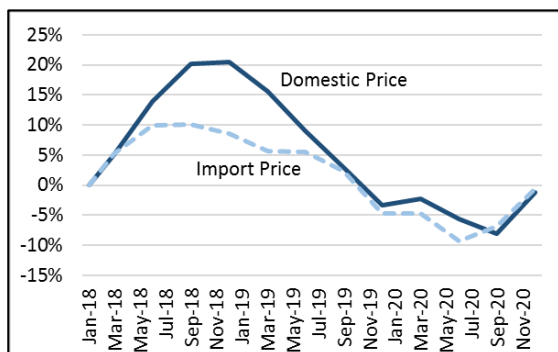
²⁹⁰ Mary Amiti, Sebastian Heise, and Noah Kwicklis, "Will New Steel Tariffs Protect U.S. Jobs?," Federal Reserve Bank of New York, *Liberty Street Economics* (blog), April 19, 2018, <http://libertystreeteconomics.newyorkfed.org/2018/04/will-new-steel-tariffs-protect-us-jobs.html>.

²⁹¹ For example, see Alberto Cavallo, et al., *Tariff Passthrough at the Border and at the Store: Evidence from U.S. Trade Policy*, Becker Friedman Institute, Working Paper No. 2019-124, October 2019, https://bfi.uchicago.edu/wp-content/uploads/BFI_WP_2019124-1.pdf.

²⁹² Mary Amiti, Stephen J. Redding, and David E. Weinstein, *Who's Paying for the U.S. Tariffs? A Longer-Term Perspective*, National Bureau of Economic Research, Working Paper 26610, January 2020, <https://www.nber.org/papers/w26610>.

prices had become more closely aligned. For aluminum, both domestic and import prices drifted lower in 2019 and the first half of 2020 after peaking in mid-2018, but import prices fell at a faster rate throughout the period. Since June 2020, both imported and domestic aluminum prices have increased significantly (see Figure 11).

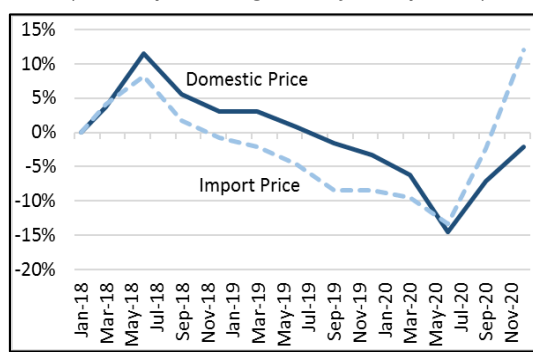
Figure 10. Steel Price Indices
(monthly % change from January 2018)



Source: U.S. Bureau of Labor Statistics.

Notes: Based period set to January 2018. Production series ID = PCU3311 and import series ID = EIUIZ3311. Import price index excludes tariffs.

Figure 11. Aluminum Price Indices
(monthly % change from January 2018)



Source: U.S. Bureau of Labor Statistics.

Notes: Base period set to January 2018. Production series ID = PCU3313 and import series ID = EIUIZ3313. Import price index excludes tariffs.

- U.S. steel and aluminum production initially expanded and U.S. imports declined as demand for goods produced domestically increased relative to demand for imported goods** (see Figure 12 and Figure 13). Although U.S. steel and aluminum producers increased prices relative to foreign producers in 2018 and 2019, the additional tariff costs on imports, which were largely passed through to downstream firms (as discussed above), put downward pressure on demand for imports.²⁹³ By the first quarter of 2020, U.S. real imports of steel and aluminum (adjusted for price fluctuations) had decreased by more than 30% and 16%, respectively, compared to their average quarterly values in 2017, the year before the tariffs went into effect.²⁹⁴

By contrast, U.S. production increased in the first two years after the tariffs took effect. The increase in domestic steel and aluminum production peaked in the fourth quarter of 2018 at 13.5% and 9.0%, respectively, above average 2017 values.²⁹⁵ In the first and second quarters of 2020, domestic production of both metals fell sharply in line with broader declines in U.S. economic activity associated with the COVID-19 pandemic, but rebounded significantly by the end of the year. Imports remained significantly depressed throughout 2020. In April 2020, citing declining market conditions including the global oversupply of

²⁹³ Downstream firms' demand sensitivity to higher import prices (their price elasticity of demand) depends on the degree to which the steel and aluminum products produced domestically are sufficient substitutes for the products facing the tariffs, and the availability of domestic supplies.

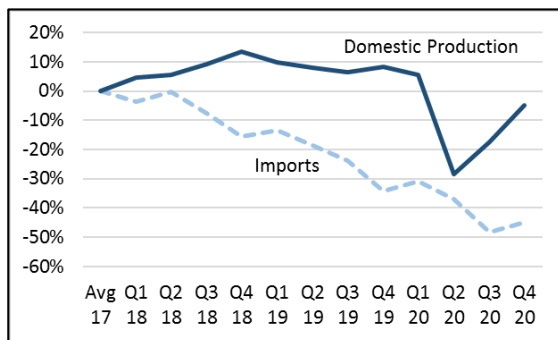
²⁹⁴ Import statistics sourced from U.S. Census Bureau.

²⁹⁵ Production data are from Federal Reserve Economic Data (FRED), Federal Reserve Bank of St. Louis.

aluminum, falling prices, and the economic fallout from the pandemic, Alcoa announced plans to cut production at its Intalco aluminum smelter in Ferndale, WA, and began layoffs at the facility in June.²⁹⁶ Some U.S. steel facilities have announced similar plant closures, or reductions in capacity (see “U.S. Steel and Aluminum Manufacturing and Employment”).

Figure 12. Domestic Production and Imports: Steel

(quarterly % change from 2017, real values)

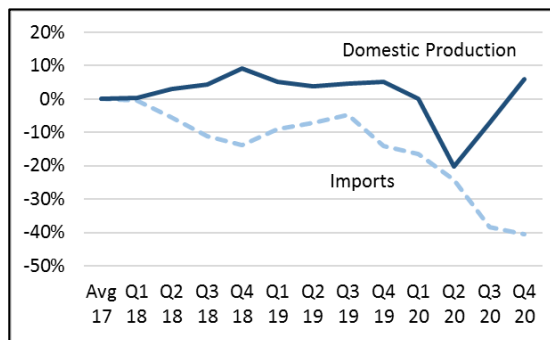


Source: Production data from Federal Reserve Economic Data (FRED) and imports from U.S. Census Bureau.

Notes: Base period set to 2017 average. Production series seasonally adjusted, ID = IPN331IA2RSQ. Import classification = NAICS 3311. Data are in real terms (adjusted for price fluctuations).

Figure 13. Domestic Production and Imports: Aluminum

(quarterly % change from 2017, real values)



Source: Production data from Federal Reserve Economic Data (FRED) and imports from U.S. Census Bureau.

Notes: Base period set to 2017 average. Production series seasonally adjusted, ID = IPG3313S. Import classification = NAICS 3313. Data are in real terms (adjusted for price fluctuations).

- The combination of higher domestic prices and the added duties on imports led to higher input costs for some downstream industries.** Academic studies suggest U.S. industries that use steel and aluminum in their products (“downstream” industries, including auto manufacturers and oil producers) faced higher input costs as a result of the tariffs.²⁹⁷ These studies suggest that higher input costs led to some combination of lower profits for producers and higher prices for importers and consumers, which in turn may have dampened demand for downstream products, leading to some contraction in these sectors. A study by researchers at the Federal Reserve Board, which examined effects on the manufacturing sector from all U.S. tariff actions in 2018, found that higher input costs from the tariffs were associated with higher prices, employment declines, and reductions in output for affected firms.²⁹⁸ Another study found that the higher input costs associated with the tariffs may have led to a decrease in U.S. exports for firms reliant on imported intermediate inputs. This study suggests export

²⁹⁶ Geoff Baker, “Alcoa Begins Laying Off Workers at its Ferndale Aluminum Plant Ahead of Schedule,” *Seattle Times*, June 4, 2020. For more information, see “Domestic Aluminum Manufacturing”.

²⁹⁷ Mary Amiti, Stephen J. Redding, and David E. Weinstein, “The Impact of the 2018 Tariffs on Prices and Welfare,” *Journal of Economic Perspectives*, vol. 33, no. 4 (Fall 2019), pp. 188-189.

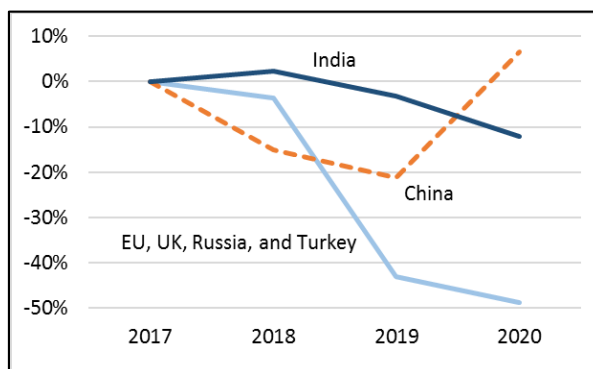
²⁹⁸ Aaron Flaaen and Justin Pierce, *Disentangling the Effects of the 2018-2019 Tariffs on a Globally Connected U.S. Manufacturing Sector*, Washington: Board of Governors of the Federal Reserve System, Finance and Economics Discussion Series 2019-086, December 23, 2019, <https://www.federalreserve.gov/econres/feds/files/2019086pap.pdf>.

growth was approximately 2% lower for products made with steel and aluminum or other goods subject to higher U.S. tariffs, relative to unaffected products.²⁹⁹ Some groups supporting the tariffs refute these estimates; a report by the Economic Policy Institute argues that increased domestic steel prices had a negligible effect on downstream manufacturers and consumer good prices.³⁰⁰

Several U.S. companies have stated that the tariffs have increased their operating costs, and that these higher input costs for U.S. downstream firms potentially gives their foreign competitors an advantage in the U.S. market and abroad.³⁰¹ Allegheny Technologies, which uses imported steel slabs in its production of stainless steel sheet, cited the Section 232 tariffs in its April 2020 decision to close a facility in western Pennsylvania.³⁰² In January 2020, the Trump Administration expanded the Section 232 tariff actions to certain steel and aluminum derivative products, arguing that higher input costs had disadvantaged these downstream domestic manufacturers relative to their foreign counterparts, in turn leading to more imports of the downstream products.

- **U.S. exports subject to retaliatory tariffs declined.** Six U.S. trading partners (China, EU, India, Turkey, UK, and Russia) are currently imposing retaliatory tariffs in response to U.S. Section 232 tariffs affecting approximately \$7.2 billion of U.S. annual exports (2020 value).³⁰³ The retaliatory tariffs affect many products, including agricultural goods (e.g., pork, fruits, and nuts), whiskies, and

Figure 14. U.S. Exports Subject to Section 232 Retaliation
(% change from 2017)



Source: CRS analysis with data from partner country customs agencies via Trade Data Monitor.

Notes: Base period set to 2017. Exports estimated using partner country import data. India began imposing retaliatory tariffs in 2019.

²⁹⁹ The authors suggest that the U.S. import increases had the equivalent effect of U.S. trading partners applying a 2% tariff on U.S. exports. Kyle Handley, Fariha Kamal, and Ryan Monarch, *Rising Import Tariffs, Falling Export Growth: When Modern Supply Chains Meet Old-Style Protectionism*, National Bureau of Economic Research, NBER Working Paper No. 26611, January 2020, <https://www.nber.org/papers/w26611>.

³⁰⁰ Adam S. Hersh and Robert E. Scott, *Why Global Steel Surpluses Warrant U.S. Section 232 Import Measures*, Economic Policy Institute, March 24, 2021, <https://files.epi.org/pdf/218728.pdf>.

³⁰¹ Coalition of American Metal Manufacturers and Users, "Letter to Honorable Gina Raimondo, Secretary of Commerce," March 15, 2021, https://www.tariffstaxes.org/sites/default/files/2021-03/CAMMU_232%20Raimondo_%20March%2015%202021.pdf.

³⁰² "Allegheny Technologies to Shutter Steel Plant, Cites Tariffs," *U.S. News*, April 1, 2020.

³⁰³ U.S. exports estimated using partner country import data in order to match retaliatory tariff lists with trade data. Partner country trade data accessed via Trade Data Monitor.

steel and aluminum.³⁰⁴ Generally, the retaliatory tariffs appear to have led to decreased demand for these U.S. exports as they lower the competitiveness of U.S. firms relative to other suppliers in foreign markets. U.S. exports facing retaliation in the EU, UK, Russia, and Turkey have seen the largest declines, decreasing by nearly 50% since 2017 (**Figure 14**). U.S. exports to China subject to retaliation declined in 2018 and 2019, but increased in 2020—many of these products are included in China’s purchase commitments under the U.S.-China Phase One agreement.³⁰⁵ India delayed its retaliatory tariffs until 2019, after which U.S. exports of the targeted products declined.

Retaliatory tariffs also have given U.S. exporters an incentive to manufacture abroad to avoid the retaliation. Facing retaliatory tariffs on U.S. motorcycle exports to the European Union, Harley-Davidson announced its intent to shift some of its production out of the United States to remain competitive in the EU market.³⁰⁶ In July 2019, the company received approval from the European Union to begin importing motorcycles from Thailand, facing a 6% tariff, as compared to the 31% tariff applied to motorcycles exported to the European Union from the United States.³⁰⁷ In April 2021, however, the European Commission issued a ruling requiring the EU to treat imports of Harley-Davidson motorcycles as originating from the United States, and thus subject to EU retaliatory tariffs, regardless of their production origin.³⁰⁸

Aggregate Effects on the U.S. Economy

In addition to industry-level effects, tariffs also have the potential to affect the broader U.S. economy. For example, academic studies suggest the ad hoc nature of the tariffs may have increased uncertainty in the U.S. business environment placing a drag on investment activity. One study found that uncertainty resulting from U.S. trade policy reduced investment by roughly 1.5% in 2018.³⁰⁹ U.S. tariffs may also reduce national consumption patterns, as the higher costs of imported goods potentially reduces consumers’ discretionary income and therefore aggregate demand. Similarly, retaliatory tariffs may dent U.S. consumption to the extent they cause export declines and lower incomes in affected industries. For example, some research suggests U.S. counties most exposed to China’s retaliatory tariffs on U.S. agricultural exports saw auto sales decline by 4%-5% relative to unaffected counties after the retaliatory tariffs were imposed.³¹⁰

³⁰⁴ Canada and Mexico removed retaliatory tariffs affecting approximately \$14.1 billion of U.S. annual exports (2019 value) after the Trump Administration exempted both countries from Section 232 tariffs in May 2019.

³⁰⁵ For more information, see CRS Insight IN11208, *U.S. Signs Phase One Trade Deal with China*, by Karen M. Sutter.

³⁰⁶ “U.S. Trade War with Europe Revs Up as Harley-Davidson Shifts Production,” *Financial Times*, June 25, 2018.

³⁰⁷ “Harley-Davidson Gets EU Approval for Plan to Dodge \$100-million Tariff Hit,” *Los Angeles Times*, July 23, 2019.

³⁰⁸ According to the Commission, the company’s shift in production location was motivated in part by a desire to avoid the EU’s retaliatory tariffs and therefore is not “economically justifiable” as defined in EU law. European Commission, “Commission Implementing Regulation (EU) 2021/563,” *Official Journal of the European Union*, April 7, 2021, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021D0563&from=EN>.

³⁰⁹ Dario Caldara, et al., “The Economic Effects of Trade Policy Uncertainty,” *Journal of Monetary Economics*, vol. 109 (January 2020), pp. 38-59.

³¹⁰ Michael E. Waugh, *The Consumption Response to Trade Shocks: Evidence from the U.S.-China Trade War*, National Bureau of Economic Research, NBER Working Paper 26353, December 2019, <https://www.nber.org/papers/w26353>.

Some groups that support the tariffs, however, argue that estimates of their impact may exaggerate potential negative effects.³¹¹

Assessing the tariffs overall impact on the U.S. economy is in part a distributional question, given the tariffs varied effects on producers in protected industries, downstream industries, consumers, and exporters subject to retaliation. From a policy perspective some analysts see the Section 232 trade actions as addressing long-standing issues of fairness that are intended to provide U.S. steel and aluminum producers with a more level playing field.³¹² Research by academic economists, however, generally argues the negative impact of higher prices on consumers and industries using the imported goods outweighs the benefit of higher profits and expanded production in the import-competing industries and the additional government revenue generated by the tariffs, especially if the negative effects of retaliatory tariffs are taken into consideration.³¹³ Quantitative estimates of the effects vary based on modeling assumptions and techniques, but most suggest a negative overall effect on U.S. gross domestic product (GDP) as a result of the tariffs.

The Congressional Budget Office, for example, estimated that the increased tariffs in effect as of December 2019 would reduce U.S. GDP by 0.5% in 2020, below a baseline without the tariffs, while raising consumer prices by 0.5%, thereby reducing average real household income by \$1,277.³¹⁴ From a global perspective, the International Monetary Fund (IMF) estimated that the tariffs would reduce global GDP in 2020 by 0.8%.³¹⁵ As these studies examine the effects of all recent U.S. tariff actions, the impact directly attributable to the Section 232 tariffs on steel and aluminum is likely smaller as these tariffs accounted for less than 10% of imports affected by the Trump Administration's tariff actions in 2020.

The United States entered a recession in 2020, as a result of the economic fallout from the global COVID-19 pandemic with the scale of economic disruption far outweighing estimated negative effects of the Trump Administration's tariff actions, cited above.³¹⁶ U.S. and global GDP decreased by 3.5% and 3.3%, respectively, in 2020.³¹⁷ Various stakeholders, including some Members of Congress, called for suspending the U.S. tariff increases during the economic downturn, including actions under Section 232, in an effort to enhance U.S. economic growth.³¹⁸

³¹¹ Robert E. Scott, *Estimates of Jobs Lost and Economic Harm Done by Steel and Aluminum Tariffs Are Wildly Exaggerated*, Economic Policy Institute, March 21, 2018, <https://www.epi.org/publication/estimates-of-jobs-lost-and-economic-harm-done-by-steel-and-aluminum-tariffs-are-wildly-exaggerated/>.

³¹² Adam S. Hersh and Robert E. Scott, *Why Global Steel Surpluses Warrant U.S. Section 232 Import Measures*, Economic Policy Institute, March 24, 2021, <https://files.epi.org/pdf/218728.pdf>.

³¹³ For example, see Pablo D. Fajgelbaum, et al., "The Return to Protectionism," *The Quarterly Journal of Economics*, vol. 135, no. 1 (January 2020), pp. 1-55.

³¹⁴ Congressional Budget Office, *The Budget and Economic Outlook: 2020 to 2030*, January 28, 2020, p. 33, <https://www.cbo.gov/system/files/2020-01/56020-CBO-Outlook.pdf>.

³¹⁵ International Monetary Fund, *World Economic Outlook: Global Manufacturing Downturn, Rising Trade Barriers*, October 2019, pp. 31-33, <https://www.imf.org/en/Publications/WEO/Issues/2019/10/01/world-economic-outlook-october-2019>.

³¹⁶ For more, see CRS Report R46270, *Global Economic Effects of COVID-19*, coordinated by James K. Jackson.

³¹⁷ Bureau of Economic Analysis, "Gross Domestic Product, 2nd Quarter 2020 and Annual Update," press release, July 30, 2020, <https://www.bea.gov/news/2020/gross-domestic-product-2nd-quarter-2020-advance-estimate-and-annual-update>.

³¹⁸ Ana Swanson, "U.S. Weighs Tariff Relief but Some Fear China Will Take Advantage," *New York Times*, March 15, 2020. Representative Stephany Murphy, "Murphy, Cunningham Urge Congressional Leadership to Suspend Tariffs in Upcoming Coronavirus Response Bill," press release, March 18, 2020, <https://murphy.house.gov/news/documentsingle.aspx?DocumentID=1254>.

Some beneficiaries of the increased tariffs, however, argue they are necessary to help the industry recover from the pandemic and maintain a level playing field in the face of global overcapacity.³¹⁹

Issues for Congress

As Congress debates the Trump Administration's Section 232 actions and potential action under the Biden Administration it may consider the following issues, many of which include potential legislative responses.

Possible Long-Term Effects

Section 232 tariffs on steel and aluminum imports have now been in place for over three years and have no statutory expiration. President Biden has not indicated if he will remove or amend the tariffs, but various industry groups and Members of Congress have reached out to the Biden Administration both for and against the tariffs.³²⁰ Some Members, including then Senate Finance Chair Grassley, have also urged for tariff relief to help U.S. importers in the wake of the economic downturn of the COVID-19 pandemic.³²¹

Congress may explore the long-term economic consequences of the tariffs on U.S. domestic industry, including steel and aluminum producers, downstream manufacturers, and those sectors targeted by retaliatory tariffs. Impacts may include increased prices and costs for steel and aluminum producers and users, respectively; changes in workforce levels; shifts in global supply chains as firms seek to avoid tariffs; and potential loss of foreign markets for domestic producers facing retaliatory tariffs.

In a 2018 Ways and Means Committee hearing on the Section 232 tariff exclusion process, Commerce stated the "Secretary has directed Commerce Department economists to conduct semi-annual reviews of the impacts of the steel and aluminum tariffs, including on downstream sectors."³²² As part of its own assessment, Congress may request the Commerce Department's analysis.

Appropriate Delegation of Constitutional Authority

In enacting Section 232 of the Trade Expansion Act, Congress delegated aspects of its authority to regulate international commerce to the executive branch. 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 USITC, 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

³¹⁹ See January 2021 letters from various U.S. steel associations and the American Primary Aluminum Association to then President-Elect Biden, at <https://www.steel.org/wp-content/uploads/2021/01/Steel-Coalition-Letter-to-President-Elect-Biden-011121.pdf> and https://mma.prnewswire.com/media/1419331/APAA_Biden_Letter.pdf?p=pdf.

³²⁰ See, for example, Americans for Free Trade letter to President-Elect Biden, December 7, 2020, <http://americansforfreetrade.com/wp-content/uploads/2020/12/AFT-FFT-Biden-Transition-Team-Letter-Final-120720.pdf>; American Iron and Steel Institute, et al., letter to President-Elect Biden, January 11, 2021, <https://www.steel.org/2021/01/urge-biden-keep-steel-tariffs/>.

³²¹ Adam Beshudi, "Grassley: White House, Congress should consider tariff easing measures," *PoliticoPro*, March 16, 2020.

³²² U.S. Congress, House Committee on Ways and Means, Subcommittee on Trade, *Hearing on Product Exclusion Process for*, 115th Cong., 2nd sess., July 24, 2018, Serial No. 115-TR06, <https://docs.house.gov/meetings/WM/WM04/20180724/108591/HHRG-115-WM04-Transcript-20180724.pdf>.

on presidential nominee confirmations in the Senate). Some Members and observers have suggested that Congress should require additional steps in the Section 232 process. In the 116th Congress, a variety of proposals were introduced to amend Section 232, in various ways, such as by:

- placing the Department of Defense in charge of the investigation stage and/or determination of a national security threat,
- requiring an economic impact study by the USITC, congressional consultation, or approval of any new tariffs,
- allowing for a resolution of disapproval of trade actions, or
- mandating a transparent exclusion process to limit potential negative domestic effects.

In addition, the 2020 expansion of the steel and aluminum tariffs, initially imposed in 2018, has raised questions about Section 232 authority expiration. Some stakeholders have suggested that Section 232 reform should include new or clarified timelines, deadlines, or expiration dates for any tariffs or quotas imposed or on the authority to impose new or expanded trade actions.

During the 116th Congress, then-Senate Finance Chair Senator Grassley, sought to draft a consensus bill to restore certain congressional authority that would gain sufficient bipartisan support to withstand a possible presidential veto. Contentious issues have included whether any changes would be retroactive, potentially affecting the steel and aluminum tariffs, or whether they would only apply to future actions, and whether Congress's role should be consultative or decisive (e.g., requiring congressional approval). At the time, the Grassley noted that, "the president's use of tariffs has brought to our attention the shortcomings of the 1962 and 1974 legislation on trade that delegated too much authority from Congress' constitutional power [over trade] to the executive branch."³²³ After multiple meetings, Grassley stated that the efforts had stalled.

The current Senate Finance Chair Senator Wyden has not stated how he wants to proceed in the 117th Congress, although he previously supported legislative reform efforts.³²⁴ The Biden Administration's stance on potential changes to the Section 232 authority and the subsequent need for a veto-proof congressional majority to enact any amendments is also unclear. To date, Senator Portman has re-introduced his previous proposal (see S. 746) with some of the same bipartisan co-sponsors as in the last Congress (see 116-S. 365). According to press reports, Senator Toomey may reintroduce his proposed amendment from the previous session (see 116-S. 287).³²⁵ The bills sponsored by Senators Portman and Toomey were the focus of then-Chair Grassley's consensus efforts in the last Congress. Ways and Means Ranking Member Brady indicated that there is still "real interest" in strengthening Congress' authority and sees an opportunity to work with the Administration on the issue.³²⁶

³²³ Megan Cassella, "Grassley Still Hopes to Craft 232 Reform Bill with Wyden," *PoliticoPro*, March 4, 2020.

³²⁴ In reference to reform efforts in the 116th Congress, Senator Wyden stated "I am all for putting some guardrails in this administration's unpredictable and chaotic trade policy. We haven't been able to find the solution yet, but I am ready to continue to work with the chairman to find a legislative solution that will garner wide bipartisan support." Niv Elia, "Grassley says he wants to rein in Trump tariff powers," *The Hill*, January 8, 2020.

³²⁵ "Senators re-introduce bill to expand Pentagon's role in Section 232 probes," *Inside U.S. Trade*, March 16, 2021.

³²⁶ Representative Kevin Brady speaking during CSIS event, "A Conversation with Representative Kevin Brady on the Republican Party's Trade Agenda," April 15, 2021, <https://www.csis.org/events/conversation-representative-kevin-brady-republican-partys-trade-agenda>.

Others have proposed revisiting the delegation of congressional constitutional authority more broadly, such as by requiring congressional approval of executive branch trade actions more generally. The Tariff Reform Coalition, a cross-sectoral coalition of industry associations, have advocated for “greater Congressional oversight with respect to Presidential use of tariff authority.”³²⁷

USTR Tai endorsed modernizing Section 232 during her testimony to the Senate Finance Committee. “I would really like to strengthen the trade tools that we have to address the problems that we have today, whether that is global overcapacity or other challenges that weren’t contemplated 50 or 60 years ago when many of our trade statutes were drafted... We should plug in the gaps we see in countering the unfair trade practices we see today.”³²⁸

For a list of proposals in the 117th and 116th Congresses, see **Appendix C**.

Legislative Responses to Retaliatory Tariffs

Several major U.S. trading partners are currently imposing retaliatory tariffs in response to the U.S. actions. In the 116th Congress, some Members of Congress proposed legislation to respond to the potential economic impact of these foreign retaliatory tariffs. Some proposals would have expanded programs like trade adjustment assistance to include assistance for workers, firms, and farmers harmed by foreign retaliation.³²⁹ The Trump Administration established trade aid packages in 2018 and 2019 to provide both direct and indirect assistance for farmers affected by “trade damage” from foreign retaliation to Section 232 and other tariffs through the U.S. Department of Agriculture.³³⁰ While many of the retaliatory tariffs remain, the subsidy programs have expired. Congress may review the impact of the assistance program and examine whether they should be renewed in part or in whole. Others have suggested broader trade adjustment assistance reform is needed to help U.S. workers and firms harmed by globalization, supply chain shifts, global over-capacity in certain sectors, and depressed demand due to the COVID-19 pandemic. For a list of proposals from the 116th Congress, see **Appendix C**.

Establishing Threshold

It is relatively easy for a stakeholder to prompt the Section 232 investigation process. The statute states that “Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce ... shall immediately initiate an appropriate investigation.” To limit the volume of Section 232 petitions and help ensure that any requests are sufficiently justified, Congress may consider establishing criteria or a threshold that a request must meet before Commerce and Defense agencies invest resources in conducting a Section 232 investigation. Similarly, Congress may consider limiting the types of imported articles that may be considered under Section 232 (e.g., 116- S. 287, H.R. 940).

³²⁷ Tariff Reform Coalition, letter to Chair and Ranking Members of Senate Finance and House Ways and Means Committee, September 19, 2020, <http://www.nftc.org/default/trade/Tariff%20Reform%20Coalition%20Letter.pdf>.

³²⁸ U.S. Congress, Senate Committee on Finance, *The President’s 2021 Trade Policy Agenda*, 117th Cong., May 12, 2021.

³²⁹ For more information on trade adjustment assistance, see CRS In Focus IF10570, *Trade Adjustment Assistance for Workers (TAA)*, by Benjamin Collins, CRS Report RS20210, *Trade Adjustment Assistance for Firms*, by Rachel F. Fefer, and CRS Report R40206, *Trade Adjustment Assistance for Farmers*, by Mark A. McMinimy.

³³⁰ For more information see CRS In Focus IF11289, *Farm Policy: Comparison of 2018 and 2019 MFP Programs*, by Randy Schnepf and CRS Report R45310, *Farm Policy: USDA’s 2018 Trade Aid Package*, by Randy Schnepf et al.

Interpreting National Security

Congress created the Section 232 process to try 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, a top source of U.S. imports of steel and aluminum, was initially subject to the Section 232 tariffs even though U.S. law considers the country part of the U.S. defense industrial base.³³¹

National security is not clearly defined in the statute, allowing for ambiguity and alternative interpretations by the Executive Branch. International trade commitments both at the multilateral and FTA level generally include broad exceptions on the basis of national security. The Trump Administration argued its Section 232 actions were 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 other 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, some Members proposed legislation that would narrowly define “national security” under Section 232 and the factors to be considered in a Section 232 investigation. One bill from the 116th Congress would have limited the scope of national security under the statute to protection against foreign aggression (S. 287, H.R. 940). Some Members have also proposed changing the primary investigative authority from Commerce to Defense to provide more weight to the military perspective on what constitutes a national security threat.

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 trade agreements. In addition to the international efforts discussed, U.S. FTA negotiations, including the recently implemented USMCA, include related disciplines (e.g., by establishing rules on state-owned enterprises or anticorruption). To address these issues, Congress could consider establishing specific or enhanced new negotiating objectives for trade agreement negotiations, potentially through TPA legislation as the current version expires in July 2020. Congress could also consider directing the executive branch to prioritize engagement in such negotiations, by, for example, endorsing the new U.S.-EU discussions on overcapacity, continuation of the OECD discussions or the trilateral proposals by USTR with the EU and Japan to address nonmarket practices, including subsidies, state-owned enterprises, and technology transfer requirements, mostly aimed at China. Congressional oversight on ongoing reform efforts at the WTO may examine efforts to establish new international trade rules on these issues (see below).

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 uses 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

³³¹ 10 U.S.C. §148.

dispute settlement panel issued a ruling relating to the U.S. use of national security exemptions. 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 called on other parties to join it in opposition to the U.S. actions on Section 232, while simultaneously promoting domestic policies often seen as undermining WTO rules.³³² Congress could potentially address these concerns by conducting increased oversight by inviting testimony from multiple parties, considering legislation to establish more stringent criteria for Section 232 investigations, or requiring congressional approval of any use of Section 232, among other possible actions.

The WTO overall is at a critical point and many observers believe it needs to adopt reforms to retain its credibility and continue its role as the foundation of the world trading system. Potential areas of reform could include addressing the issues underlying the Section 232 actions including: the proposal on subsidies and nonmarket practices, reforming certain aspects of the WTO dispute settlement mechanism, or clarifying the national security exception and the WTO's role. The growing debate over the role and future direction of the WTO may be of interest to Congress as it conducts oversight over the U.S. position and role in reform efforts as some Members have expressed support to address long-standing concerns of the United States.³³³

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. 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 and U.S. credibility in future trade negotiations. The Biden Administration has expressed support for stronger relationships with allies and support of multilateral institutions, creating a potential opportunity to lower the tension and stress. For example, WTO reform could provide an opportunity for the United States to address issues of joint concern, such as rules for subsidies, with U.S. allies and trading partners, and strengthen those relationships.

³³² 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.

³³³ For more information, see CRS Report R45417, *World Trade Organization: Overview and Future Direction*, coordinated by Cathleen D. Cimino-Isaacs.

Appendix A. Amendments to 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.³³⁴ In 1955, the provision was amended to also allow the President to increase trade restrictions, in cases where national security may be threatened.³³⁵

The Trade Agreements Extension Act of 1958 (P.L. 85-686 §8) expanded the 1955 provisions, by outlining specific factors to be considered during an investigation, allowing the private sector to petition for relief, and requiring the President to publish a report on each petition.³³⁶ The factors to be considered during an investigation included (1) the domestic production capacity needed for U.S. national security requirements, (2) the effect of imports on domestic production needed for national security requirements, and (3) “the impact of foreign competition on the economic welfare of individual domestic industries.”

Section 232 of the Trade Expansion Act of 1962 (P.L. 87-794) continued the provisions of the 1958 Act. Section 232 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 petroleum imports.³³⁷

Section 232: Joint Disapproval Resolution Provision for Petroleum Products

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.³³⁸ Congress included the joint disapproval resolution provision in the Crude Oil Windfall Profit Tax Act of 1980. The bill was signed into law on April 2, 1980, the same day that President

³³⁴ P.L. 83-464, §2.

³³⁵ The original inclusion of the 1955 provision appears to be due to considerations about specific minerals, namely petroleum, fluorspar, lead, and zinc. However, according to the committee report, the committee chose not to focus on specific commodities, but to create a more general provision requiring the President to adjust imports where national security may be threatened. (See S.Rpt. 84-232, p. 4.)

³³⁶ P.L. 85-686, §8. For a review of the committee’s rationale for these changes see, H.Rpt. 85-2502, H.Rpt. 85-1761, and S.Rpt. 85-1838.

³³⁷ Following the reorganization of trade functions in 1973, 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. Following the reorganization of trade functions in the Reorganization Plan No. 3 of 1979, 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. The Omnibus Trade and Competitiveness Act of 1988 also reduced the investigation timeline from one year to 270 days and created the 15-day implementation period for the President to act. The Crude Oil Windfall Profit Tax Act of 1980 (P.L. 96-223, §402) created an option for Congress to override presidential actions to adjust petroleum imports through a joint disapproval resolution.

³³⁸ P.L. 96-223, §402, the Crude Oil Windfall Profit Tax Act of 1980.

Carter proclaimed a license fee on crude oil and gasoline pursuant to Section 232 in Proclamation 4744.³³⁹

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. 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. While the measure passed the House, it was indefinitely postponed in the Senate.³⁴⁰ Multiple joint resolutions of disapproval were introduced in Congress in 1980, but none passed both chambers.

In addition to the disapproval mechanism created in the Crude Oil Windfall Profit Tax Act of 1980, President Carter's action in Proclamation 4744 was also challenged in court and through separate legislation in Congress. On May 13, 1980, a federal district court struck down the President's action on petroleum imports as unlawful, thereby preventing the government from implementing the program. The court's decision, however, was appealable to the higher courts.³⁴¹ Before a court could consider an appeal, Congress enacted an amendment to a bill to extend the public debt limit (P.L. 96-264, Section 2) on June 6, 1980, which terminated Proclamation 4744's petroleum import program. Section 2 of P.L. 96-264 did not use the disapproval mechanism established in the Crude Oil Windfall Profit Tax Act of 1980; it was a separate piece of legislation that was attached as an amendment to an unrelated bill.³⁴²

On June 19, 1980, the President formally rescinded Proclamation 4744 "in its entirety, effective March 15, 1980."³⁴³

³³⁹ Presidential Proclamation 4744, "Petroleum Import Adjustment Program," *Federal Register* volume 45, No. 66, April 3, 1980.

³⁴⁰ H.J.Res 531.

³⁴¹ *Indep. Gasoline Marketers Council, Inc. v. Duncan*, 492 F. Supp. 614 (D.D.C. 1980).

³⁴² H.R. 7428 (P.L. 96-264).

³⁴³ "Imports of Petroleum and Petroleum Products," Proclamation 4766, June 19, 1980, (45 *Federal Register* 41899).

Appendix B. Section 232 Investigations

Table B-1. Section 232 Investigations and Presidential Actions, 1962-2020

	Subject of Investigation	Year Initiated	Initiator	Treasury or 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	Treasury or 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	- ^a
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	Deferred a formal decision on the Section 232 case and instead sought voluntary restraint agreements starting in 1986 with leading foreign suppliers and developed a domestic plan of programs to help revitalize the industry. ^b
18	Antifriction bearings	1987	Anti-Friction Bearing Manufacturers Association	Negative	-
19	Petroleum	1987	National Energy Security Committee (an industry group)	Positive	No action taken. ^c
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	-

	Subject of Investigation	Year Initiated	Initiator	Treasury or Commerce Determination	Presidential Action
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. ^c
25	Crude Oil	1999	Secretary of Commerce	Positive	No action taken. ^c
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 (Proclamation 9705).
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 (Proclamation 9704).
29	Automobiles, including SUVs, vans and light trucks, and automotive parts	2018	Secretary of Commerce	Positive	Directed USTR to negotiate with European Union (EU), Japan, and others to resolve national security threat (Proclamation 9888).
30	Uranium ore and products	2018	U.S. uranium mining companies (UR-Energy and Energy Fuels)	Positive	President did not concur with Commerce findings. Established U.S. Nuclear Fuel Working Group to develop recommendations to revive domestic industry. ^d
31	Titanium Sponge	2019	Titanium Metals Corp.	Positive	President concurred with Commerce findings but did not restrict imports. Established working group with Japan to ensure access to titanium sponge. ^e

	Subject of Investigation	Year Initiated	Initiator	Treasury or Commerce Determination	Presidential Action
32	Transformers and certain grain-oriented electrical steel parts	2020	Secretary of Commerce	[Determination Unknown] ^f	N/A
33	Mobile Cranes	2020	Manitowoc Company, Inc.	Terminated at request of petitioner	N/A
34	Vanadium	2020	AMG Vanadium and U.S. Vanadium	[Determination Unknown] ^g	N/A

Source: CRS compiled from the Bureau of Industry and Security's (BIS) "Section 232 Investigations Program Guide," June 2007, and other Department of Commerce sources.

- a. Although this investigation concluded with a negative threat determination, the President accepted Commerce's recommendation to start a 10-year program to upgrade the National Defense Stockpile ore into high-carbon ferrochromium and ferromanganese and to remove certain ferroalloy imports from eligibility for duty-free entry under the Generalized System of Preferences (49 FR 21391).
- b. 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).
- c. 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.)
- d. President Donald Trump, "Memorandum on the Effect of Uranium Imports on the National Security and Establishment of the United States Nuclear Fuel Working Group," July 12, 2019.
- e. President Donald Trump, "Memorandum on the Effect of Titanium Sponge Imports on the National Security," February 27, 2020.
- f. According to CRS communication with BIS, Commerce sent its investigation report to the White House on October 16, 2020.
- g. According to CRS communication with BIS, Commerce sent its investigation report on vanadium to the White House on February 22, 2021.

Appendix C. Proposals Concerning Section 232

Table A-1. Select Proposals on Section 232: 117th Congress
(Through May 2021)

Legislation	Title	Brief Description
S. 691	Global Trade Accountability Act	To require congressional approval, through a joint resolution, of certain trade actions under Sec. 232 and other trade authorities. Would require the President to report to Congress on the proposed trade action and provide an analysis of its economic impact.
S. 746	Trade Security Act of 2021	To amend Sec. 232 to allow for a congressional joint disapproval resolution to override presidential actions. Bill would also transfer investigatory authority to the Secretary of Defense and would outline the scope of a national security assessment.

Source: CRS, compiled from Congress.gov

Notes: Sec. 232 = Section 232 of the Trade Expansion Act of 1962; IEEPA = International Emergency Economic Powers Act.

Table C-1. Select Proposals on Section 232: 116th Congress

Legislation	Title	Brief Description
Select Proposals on Congressional-Executive Powers		
H.R. 3673	Promoting Responsible and Free Trade Act of 2019	To require congressional approval of certain trade remedies, including a joint resolution for approval of Sec. 232 investigation report; and to change investigatory authority to the Secretary of Defense, and recommendation authority to the Secretary of Commerce.
S. 899 / H.R. 3477	Reclaiming Congressional Trade Authority Act of 2019	To require congressional approval of duty rate changes under Sec. 232 and IEEPA, and to allow for congressional disapproval of actions under Section 301 of the Trade Act of 1974.
S. 365 / H.R. 1008	Trade Security Act of 2019	To amend Sec. 232 to allow for a congressional joint disapproval resolution to override presidential actions; to transfer investigatory authority to the Secretary of Defense; and to outline the scope of a national security assessment.
S. 287 / H.R. 940	Bicameral Congressional Trade Authority Act of 2019	To amend Sec. 232 to require congressional approval of presidential actions; to transfer investigatory authority to the Secretary of Defense. The bill also outlines specific national security-related items to be covered under Sec. 232 investigations.

Legislation	Title	Brief Description
H.R. 723 / S. 1284	Global Trade Accountability Act of 2019	To amend Sec. 232 and other trade authorities to require congressional approval of unilateral trade actions. Both measures would require the President to report to Congress on the proposed trade action and provide an analysis of its economic impact, and Congress would need to pass a resolution before the action would go into effect. H.R. 723 provides the President 90-day temporary authority to act for national security reasons, after which congressional approval would be required.
Select Proposals on the Auto Investigation		
H.R. 1158	Consolidated Appropriations Act, 2020 (P.L. 116-93)	Requires the Administration to publish the Sec. 232 report on automotive imports publicly, and to provide any classified information from the report to Congress.
S. 121 / H.R. 1710; H.R. 8352	Automotive Jobs Act of 2019; Automotive Jobs Act of 2020.	To require a study of the U.S. auto industry by USITC and to stall any action relating to the 2018 Sec. 232 investigation into auto imports until such a study is completed and reviewed by the President.
Select Proposals on Tariff Exclusions and Tariff Revenue		
S. 2551	Tariff Rebate Act	To establish the Tariff Rebate Program to disburse revenues from tariffs to certain eligible individuals.
S. 2362	American Business Tariff Relief Act of 2019	To establish a process for U.S. businesses to obtain exclusions from certain duties imposed under Sec. 301 of the Trade Act of 1974 and Sec. 232 of the Trade Expansion Act of 1962, and for other purposes.
Select Proposals to Mitigate the Impact of Retaliatory Tariffs		
S. 1984	To amend the Magnuson-Stevens Fishery Conservation and Management Act to provide fisheries disaster relief for commercial fishery failures that are due to certain duties, and for other purposes.	To provide relief for fisheries targeted for retaliation, in response to Sec. 232 actions.
H.R. 2690 / S. 1453	Assistance for Farmers Harmed by Tariffs on Exports Act	To provide trade adjustment assistance to farmers affected by retaliatory tariffs on U.S. exports in response to Sec. 232 actions.
H.R. 6124	Assistance for Firms Harmed by Tariffs on Exports Act	To provide trade adjustment assistance to firms affected by retaliatory tariffs on U.S. exports in response to Sec. 232 actions.
H.R. 2362 / S. 3980	American Agriculture First Act	To prioritize the purchase of agricultural commodities from domestically owned enterprises, and for other purposes. The bill cites trade damage from retaliation by foreign nations, as primary determining factor.
Select Other Measures		

Legislation	Title	Brief Description
S. 5049	National Critical Capabilities Defense Act of 2020	To set up a Committee on National Critical Capabilities to review certain investments and other transactions that could result in a threat to one or more national critical capabilities. If the committee determines a transaction poses such a threat, it would recommend that the President take certain appropriate actions; initiation of a Sec. 232 investigation is one such action named in the bill.

Source: CRS, compiled from Congress.gov.

Notes: Sec. 232 = Section 232 of the Trade Expansion Act of 1962; USITC = U.S. International Trade Commission; IEEPA = International Emergency Economic Powers Act.

Appendix D. 2019 U.S. Steel and Aluminum Imports

Table A-2. Top U.S. Import Suppliers of Aluminum and Steel Products
(2020, Millions of U.S. Dollars)

Aluminum				Steel			
Trading Partner	Import Value	Import Share	Change since 2017	Trading Partner	Import Value	Import Share	Change since 2017
Tariff Exempt				Tariff Exempt			
Canada	\$5,629.1	46.3%	-20.1%	Canada	\$3,967.0	24.0%	-23.6%
*Argentina	\$318.4	2.6%	-41.8%	Mexico	\$2,182.1	13.2%	-12.5%
Mexico	\$173.2	1.4%	-32.2%	*Brazil	\$1,641.5	9.9%	-33.0%
Australia	\$154.5	1.3%	-27.6%	*South Korea	\$1,517.5	9.2%	-45.6%
Total Exempt	\$6,275.4	51.6%	-22.1%	Australia	\$199.6	1.2%	0.6%
Not Exempt				*Argentina	\$27.3	0.2%	-87.7%
EU	\$1,169.8	9.6%	-2.3%	Total Exempt	\$9,535.1	57.7%	-28.6%
U.A.E.	\$795.7	6.5%	-42.8%	Not Exempt			
China	\$571.8	4.7%	-69.1%	EU	\$3,112.5	18.8%	-43.7%
Germany	\$405.2	3.3%	8.6%	Japan	\$985.9	6.0%	-40.5%
Russia	\$394.3	3.2%	-75.8%	Germany	\$872.0	5.3%	-42.7%
Bahrain	\$339.1	2.8%	-42.0%	Taiwan	\$607.7	3.7%	-51.9%
South Africa	\$319.1	2.6%	-6.3%	China	\$497.5	3.0%	-49.9%
India	\$295.9	2.4%	-22.5%	Italy	\$370.3	2.2%	-49.2%
Saudi Arabia	\$260.3	2.1%	75.9%	Netherlands	\$330.0	2.0%	-35.6%
South Korea	\$214.0	1.8%	91.9%	Sweden	\$290.4	1.8%	-41.1%
Oman	\$188.5	1.6%	102.5%	United Kingdom	\$279.5	1.7%	-39.7%
Qatar	\$180.6	1.5%	-41.2%	Austria	\$274.5	1.7%	-35.9%
**Total Not Exempt	\$5,879.8	48.4%	-37.1%	**Total Not Exempt	\$7,003.0	42.3%	-55.2%
U.S. Total (All Countries)	\$12,155.2	100.0%	-30.2%	U.S. Total (All Countries)	\$16,538.1	100.0%	-43.0%

Source: CRS, compiled from U.S. Census Bureau data on HTS products included in the Section 232 proclamations. These data do not include derivative products, see next table.

Notes: Percentage change comparisons are made to 2017 annual data, as a baseline before tariff actions took effect. EU refers to the European Union (EU) and excludes the United Kingdom. U.A.E. refers to the United Arab Emirates. (*) Absolute quota effective in place of additional tariffs. (**) Total not exempt includes additional countries not listed.

Table A-3. Top U.S. Import Suppliers of Steel and Aluminum Derivatives
(2020, Millions of U.S. Dollars)

Aluminum Derivatives			Steel Derivatives		
Trading Partner	Import Value	Import Share	Trading Partner	Import Value	Import Share
Tariff Exempt			Tariff Exempt		
Canada	\$9.1	22.9%	South Korea	\$30.4	9.7%
Mexico	\$8.1	20.5%	Canada	\$28.8	9.2%
Australia	\$0.0	0.0%	Mexico	\$23.6	7.5%
Argentina	\$0.0	0.0%	Argentina	\$0.0	0.0%
Total Exempt	\$17.3	43.4%	Australia	\$0.0	0.0%
Not Exempt			Brazil	\$0.0	0.0%
EU	\$5.6	14.1%	Total Exempt	\$82.8	26.4%
Bahrain	\$4.8	12.0%	Not Exempt		
India	\$4.4	11.0%	Oman	\$51.2	16.3%
Turkey	\$4.4	11.0%	Taiwan	\$28.5	9.1%
Belgium	\$2.4	5.9%	Thailand	\$26.1	8.3%
China	\$1.6	4.1%	Turkey	\$25.9	8.3%
Italy	\$1.4	3.4%	Sri Lanka	\$18.5	5.9%
Sweden	\$0.6	1.6%	India	\$15.7	5.0%
Spain	\$0.6	1.5%	Liechtenstein	\$15.5	4.9%
Vietnam	\$0.6	1.4%	EU	\$14.1	4.5%
Ecuador	\$0.5	1.3%	China	\$12.2	3.9%
Austria	\$0.5	1.3%	Malaysia	\$9.9	3.2%
*Total Not Exempt	\$22.5	56.6%	*Total Not Exempt	\$230.8	73.6%
U.S. Total (All Countries)	\$39.8	100.0%	U.S. Total (All Countries)	\$313.6	100.0%

Source: CRS, compiled from U.S. Census Bureau data on HTS products included in Presidential Proclamation 9980 (January 24, 2020), concerning steel and aluminum derivative products.

Notes: This table includes data on steel and aluminum bumpers and tractor stampings, which are only available from 2020. EU refers to the European Union (EU) and excludes the United Kingdom. (*)Total not exempt includes additional countries not listed.

Table A-4. Estimates of U.S. Imports Under Section 232 Vanadium Investigation
(2020, Millions of U.S. Dollars)

Top Trading Partners	Import Value	Import Share
Total U.S. Imports	\$126.8	100.0%
EU-27	\$39.1	30.8%
South Africa	\$40.4	31.8%

Canada	\$22.7	17.9%
Czech Republic	\$19.5	15.3%
Brazil	\$17.8	14.0%

Source: CRS, compiled from U.S. Census Bureau data, based on HTS codes likely within the scope of the Section 232 vanadium investigation.

Notes: These are estimates based, narrowly, on the products described in publicly available Section 232 petitions and includes: HTS 2825300050, 2850002000, 7202920000, 2841901000. The full scope of the investigation has not been made public. EU refers to the European Union (EU) and excludes the United Kingdom.

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