Section 232 Investigations: Overview and Issues for Congress

Updated November 21, 2018
Summary

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

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

Based on concerns about global overcapacity and certain trade practices, in April 2017 the Trump Administration initiated Section 232 investigations on U.S. steel and aluminum imports. Effective March 23, 2018, President Trump applied 25% and 10% tariffs, respectively, on certain steel and aluminum imports. The President temporarily exempted several countries from the tariffs pending negotiations on potential alternative measures. Permanent tariff exemptions in exchange for quantitative limitations on U.S. imports were eventually announced covering steel for Brazil and South Korea, and both steel and aluminum for Argentina. Australia was permanently exempted from both tariffs with no quantitative restrictions. In August 2018, President Trump raised the tariff to 50% on steel imports from Turkey, and the President announced in a tweet he would increase the tariff to 20% on certain aluminum imports from Turkey. The proposed United States-Mexico-Canada Agreement (USMCA) did not resolve or address the Section 232 tariffs on imported steel and aluminum from Canada and Mexico. Commerce is also managing a process for potential product exclusions in order to limit potential negative domestic effects the tariff may have on U.S. businesses and consumers. Over 38,000 steel exclusion requests have been received, of which about 12,600 have been granted, and about 4,400 have been denied. Commerce also received about 6,500 aluminum exclusion requests, of which, with 830 exclusions granted and 142 denied. U.S. trading partners are challenging the tariffs under World Trade Organization (WTO) dispute settlement rules and have threatened or enacted retaliatory measures, risking potential escalation of retaliatory tariffs. 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.”

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, but allows the President to make a final determination over the appropriate action to take following an affirmative finding by Commerce that the relevant imports threaten to impair national security. Prior to the Trump Administration, there have been 26 Section 232 investigations resulting in nine affirmative findings by Commerce. In six of those cases the President imposed a trade action.

On May 23, 2018, the Trump Administration initiated an additional Section 232 investigation on U.S. automobile and automobile part imports, and on July 18, launched a Section 232 investigation into uranium ore and product imports. These investigations, as well as the
Administration’s decision to apply the steel and aluminum tariffs on imports from Canada, Mexico, and the EU—all major suppliers of the affected imports—have prompted further questions by some Members of Congress and trade policy analysts on the appropriate use of the trade statute and the proper interpretation of threats to national security on which Section 232 investigations are based. These actions have also intensified debate over potential legislation to constrain the President’s authority with respect to Section 232.

The steel and aluminum tariffs are affecting various stakeholders in the U.S. economy, prompting reactions from several Members of Congress, some in support of the measures and others voicing concerns. In general, the tariffs are expected to benefit some domestic steel and aluminum manufacturers, leading to potentially higher steel and aluminum prices and expansion in production in those sectors, while potentially negatively affecting consumers and many end users (e.g., auto manufacturing and construction) through higher costs. To date, Congress has held hearings on the potential economic and broader policy effects of the tariffs, and legislation had been introduced to override the tariffs that have already been imposed, or to revoke or potentially limit the authority it previously delegated to the President in future investigations.
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Introduction

On March 8, 2018, President Trump issued two proclamations imposing tariffs on U.S. imports of certain steel and aluminum products, respectively, using presidential powers granted under Section 232 of the Trade Expansion Act of 1962. Section 232 authorizes the President to impose restrictions on certain imports based on an affirmative determination by the Department of Commerce (Commerce) that the targeted products are being imported into the United States “in such quantities or under such circumstances as to threaten to impair the national security.” Section 232 investigations and actions are important for Congress, as the Constitution gives it primary authority over international trade matters. In the case of Section 232, Congress has delegated 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. 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.

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

Trade is an important component of the U.S. economy, and Members often hear from constituents if factories and other businesses are hurt by competing imports, or if exporters face trade restrictions and other market access barriers overseas. Section 232 actions may affect industries, workers, and consumers in congressional districts and states (both positively and negatively). Following the steel and aluminum Section 232 actions, Commerce initiated Section 232 investigations into imports of automobiles and automobile parts in May 2018 and into uranium ore and product imports in July 2018. Based on the 270-day period to conduct the investigation as provided in the Act, Commerce’s report on auto imports is due in mid-February 2019, and the uranium report is expected by mid-August 2019. The current investigations have raised a number of economic and broader policy issues for Congress.

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

Overview of Section 232

The Trade Act of 1962, including Section 232, was enacted during the Cold War when 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 sets timelines for a Section 232 investigation, but the

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2 P.L. 96-223, Section 402. For more information, see Appendix A.
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 application 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 whether or not the targeted product is being imported “in such quantities or under such circumstances as to threaten to impair” U.S. national security, and to provide recommendations for action or inaction based on the findings. Any portion of the report that does not contain classified or proprietary information must be published in the Federal Register. See Figure 1 for the Section 232 process and timeline.

While there is no specific definition of national security in the statute, it states that the investigation must consider certain factors, 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.³

Once the President receives the report, he has 90 days to decide whether or not he concurs with the Commerce Department’s findings and recommendations, and to determine the nature and duration of the action he views as necessary to adjust the imports so they no longer threaten to impair the national security (generally, imposition of some trade-restrictive measure). The President may implement the recommendations suggested in the Commerce report, take other actions, or 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.”⁴

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⁴ Section 232 (b).
Section 232 Investigations to Date

The Commerce Department (or the Department of the Treasury before it) initiated a total of 30 Section 232 investigations between 1962 and 2018, including two investigations that remain ongoing (see Table B-1). In 16 of these cases, Commerce determined that the targeted imports did not threaten to impair national security. In 11 cases, Commerce determined that the targeted imports threatened to impair national security and made recommendations to the President. The President took action eight times. One case was terminated at the petitioner’s request before Commerce completed its investigation. Prior to the Trump Administration, 10 Section 232 investigations had been self-initiated by the Administration. (For a full list of cases to date, see Appendix B.)

In eight investigations dealing with crude oil and petroleum products, Commerce decided that the subject imports threatened to impair national security. The President took action in five of these cases. In the first three cases on petroleum imports (1973-1978), the President imposed licensing fees and additional supplemental fees on imports, which are no longer in effect, rather than adjusting tariffs or instituting quotas. In two cases, the President imposed oil embargoes, once in 1979 (Iran) and once in 1982 (Libya). Both were superseded by broader economic sanctions in the following years.5

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

The petroleum embargo against Libya was superseded by (1) Proclamation 5141 of December 22, 1983, "Imports of Petroleum and Petroleum Products," 48 Federal Register 56929, and (2) Executive Order 12538, "Imports of Refined Petroleum Products from Libya," 50 Federal Register 47527, November 15, 1985; and then was effectively revoked by Executive Order 13357, "Termination of Emergency Declared in Executive Order 12543 With Respect to the Policies and Actions of the Government of Libya and Revocation of Related Executive Order," 69 Federal Register 56665, September 20, 2004, and the corresponding Treasury regulation, Department of the Treasury, Office of Foreign Assets...
In the three most recent crude oil and petroleum investigations (from 1987 to 1999), Commerce determined that the imports threatened to impair national security, but did not recommend that the President use his authority to adjust imports. In the first of these reports (1987), Commerce recommended a series of steps to increase domestic energy production and ensure adequate oil supplies rather than imposing quotas, fees, or tariffs because any such actions would not be “cost beneficial and, in the long run, impair rather than enhance national security.” 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. These agreements predate the founding of the World Trade Organization (WTO), which established multilateral rules prohibiting voluntary export restraints (see “WTO Implications”).

In addition to the two recent cases on steel and aluminum, on May 23, 2018, after consultations with President Trump, Commerce Secretary Wilbur Ross announced the initiation of a Section 232 investigation to determine whether imports of automobiles, including SUVs, vans and light trucks, and automotive parts threaten to impair national security. Commerce held a public hearing and requested public comments to inform the ongoing auto investigation. In January 2018, two U.S. mining companies petitioned for the investigation into uranium imports. On July 18, Commerce announced the initiation of a Section 232 investigation on these imports and informed the Secretary of Defense.

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Relationship to WTO

While unilateral trade restrictions may appear to be counter to U.S. trade liberalization commitments under the WTO agreements, Article XXI of the General Agreement on Tariffs and Trade (GATT), which predates and was one of the foundational agreements of the WTO, allows WTO members to take measures to protect “essential security interests.” 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 Implications”).

Recent Section 232 Actions on Steel and Aluminum

In April 2017, two presidential memoranda instructed Commerce to give priority to two self-initiated investigations into the national security threats posed by imports of steel and aluminum. In conducting its investigation, Commerce held public hearings and solicited public comments via the Federal Register and consulted with the Secretary of Defense, as required by the statute. In addition to the hearings, stakeholders submitted approximately 300 comments regarding the Section 232 investigation and potential actions. Some parties (mostly steel producers) supported broad actions to limit steel imports, while others (mostly users and consuming industries) 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. Some

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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.\footnote{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.}


\section*{Commerce Findings and Recommendations}

The final reports, submitted to the President on January 11 and January 22, 2018, respectively, concluded that imports of certain steel mill products\footnote{U.S. Department of Commerce Bureau of Industry and Security, “The Effect of Imports of Steel on the 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).} and of certain types of primary aluminum and unwrought aluminum\footnote{U.S. Department of Commerce, Bureau of Export Administration, "The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security," October 2001, https://bis.doc.gov/index.php/forms-documents/task=doc_download&gid=81.} “threaten to impair the national security” of the United States. 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 Secretary of Defense, while concurring with Commerce’s “conclusion that imports of foreign steel and aluminum based on unfair trading practices impair the national security,” recommended targeted tariffs and “an inter-agency group further refine the targeted tariffs, so as to create
incentives for trade partners to work with the U.S. on addressing the underlying issue of Chinese transshipment” in which Chinese producers ship goods to another country to reexport. He also noted, however, that “the U.S. military requirements for steel and aluminum each only represent about three percent of U.S. production.”

Presidential Actions

On March 8, 2018, President Trump issued two proclamations imposing duties on U.S. imports of certain steel and aluminum products, based on the Secretary of Commerce’s findings. 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.

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.

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

Country Exemptions

Initially, the President temporarily excluded imports of steel and aluminum products from Mexico and Canada from the new tariffs, and the Administration had implicitly and explicitly linked a successful outcome of the North American Free Trade Agreement (NAFTA) renegotiation to maintaining the exemptions. With regard to other countries, the President expressed a willingness to be flexible, stating that countries with which the United States has a “security relationship” may discuss “alternative ways” to address the national security threat and gain an exemption from the tariffs. The President charged the USTR with negotiating bilaterally with trading partners on potential exemptions.

On March 22, after discussions with multiple countries, the President issued proclamations temporarily excluding Australia, Argentina, Brazil, South Korea, the European Union (EU), Canada and Mexico, from the Section 232 tariffs. The President 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 imports.

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21 Ibid.
23 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.
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.\(^{25}\) 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 permanently exempted from the steel tariffs.\(^{26}\) South Korea did not negotiate an agreement on aluminum and has been subject to the aluminum tariffs since May 1.

On May 31, the President proclaimed Argentina and Brazil, in addition to South Korea, permanently exempt from the steel tariffs, having reached final quota agreements with the United States on steel imports.\(^{27}\) Brazil, like South Korea, did not negotiate an agreement on aluminum and is now subject to the aluminum tariffs. The Administration also proclaimed aluminum imports from Argentina permanently exempt from the aluminum tariffs subject to an absolute quota.\(^{28}\) The 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, imports of steel and aluminum from Canada, Mexico, and the European Union are subject to the Section 232 tariffs. These countries are among the largest suppliers of U.S. imports of the targeted goods, accounting for nearly 50% by value in 2017 (see Appendix C). The imposition of tariffs on these major trading partners increases the economic significance of the tariffs and prompted criticism from several Members of Congress, including the chairs of the House Ways and Means and Senate Finance Committees.\(^{29}\)

The Trump Administration completed negotiations on the proposed United States-Mexico-Canada Agreement (USMCA) on September 30, 2018. The USMCA did not resolve or address the Section 232 tariffs on imported steel and aluminum from Canada and Mexico, but it includes a requirement that motor vehicles contain 70% or more of North American steel and aluminum content to qualify for duty-free treatment.\(^{30}\) The three parties continue to discuss the steel and aluminum tariffs, which some analysts speculate could result in quotas on imports of Mexican and Canadian steel and aluminum, possibly before a ceremonial signing of the USMCA.\(^{31}\) Some


\(^{30}\) USTR, United States-Mexico-Canada Agreement Text, https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/united-states-mexico. 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.

\(^{31}\) Isabelle Hoagland, “Sources: Canada, Mexico pushing to resolve steel, aluminum tariffs ahead of midterms,” Inside
Canadian and Mexican policymakers have suggested that the parties not sign the new agreement until the Section 232 tariffs are removed.\textsuperscript{32}

With respect to the EU, on July 27, 2018, after meeting with EU President Juncker, President Trump announced plans for "high-level trade negotiations" to eliminate tariffs, including those on steel and aluminum, among other objectives. The two sides agreed to not impose further tariffs on each other’s trade products while negotiations are active.\textsuperscript{33} It is unclear what those negotiations may seek in terms of alternative measures, but some type of quantitative restriction seems likely given the agreements the Administration has negotiated to date with most exempted countries.\textsuperscript{34}

In addition to seeking quantitative restrictions, the Trump Administration may also pursue increasing traceability and reporting requirements, which may help limit transshipments of steel or aluminum originating from nonexempt countries.

### Tariff Increase on U.S. Steel and Aluminum Imports from Turkey

On August 10, 2018, President Trump issued a proclamation raising the Section 232 tariff to 50% on covered steel imports from Turkey. The President justified the action by stating “imports have not declined as much as anticipated and capacity utilization has not increased to [the] target level.”\textsuperscript{35} In 2017, Turkey was the ninth-largest supplier of U.S. steel imports covered by the tariffs, accounting for $1.2 billion of U.S. imports (approximately 4% of relevant U.S. steel imports). The value of the Turkish lira relative to the U.S. dollar has declined by roughly 40% since the Section 232 tariffs went into effect.\textsuperscript{36} A depreciated lira makes U.S. imports from Turkey less costly to U.S. consumers, thereby counteracting the effect of the tariffs. The President noted the exchange rate volatility in his informal announcement of the tariff increase, but some observers contend that the action may be in response to ongoing foreign policy issues unrelated to trade.\textsuperscript{37} In addition, the President announced in a tweet on August 10 that he had authorized an increase of the tariff on aluminum from Turkey to 20%, but he has not yet signed a Section 232 proclamation putting the higher duty into effect.

### Product Exclusions

To limit potential negative domestic impacts of the tariffs on U.S. consumers and consuming industries, Commerce published an interim final rule for how parties located in the United States may request exclusions for items that are not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality.”\textsuperscript{38} Requests for exclusions and objections

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\textsuperscript{33} White House Factsheet, “President Donald J. Trump Launches a New Reciprocal Trade Relationship with the European Union,” July 27, 2018.

\textsuperscript{34} It appears that the quantitative restrictions negotiated by the Trump Administration to date are restrictions on U.S. imports to be administered by the United States. Some analysts have also suggested that the Administration may consider negotiating Voluntary Export Restraints (VER) to be administered by the exporting countries. The OECD defines VERs as “arrangements between exporting and importing countries in which the exporting country agrees to limit the quantity of specific exports below a certain level in order to avoid imposition of mandatory restrictions by the importing country.” Article 11 of the WTO Agreement on Safeguards, prohibits WTO Members from seeking, taking, or maintaining VERS. WTO Agreement on Safeguards, Art 11(1)(b), https://www.wto.org/english/docs_e/legal_e/25-safeg_e.htm.

\textsuperscript{35} The White House, “Presidential Proclamation Adjusting Imports of Steel Into the United States,” August 10, 2018.

\textsuperscript{36} Exchange rate values sourced from the Central Bank of Turkey.

\textsuperscript{37} Rebecca Ballhaus and Jacob M. Schlesinger, “Trump Vows to Double Metals Tariffs on Turkey as Dispute Escalates Over Detained American,” August 11, 2018.

\textsuperscript{38} 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.
to requests have been and will continue to be posted on regulations.gov.\textsuperscript{39} The rule went into effect the same day as publication to allow for immediate submissions.

Exclusion determinations are to be based upon national security considerations. To minimize the impact of any exclusion, the interim rule allows only “individuals or organizations using steel articles ... in business activities ... in the United States to submit exclusion requests,” eliminating the ability of larger umbrella groups or trade associations to submit petitions on behalf of member companies.\textsuperscript{40} Any approved product exclusion will be limited to the individual or organization that submitted the specific exclusion request. Parties may also submit objections to any exclusion within 30 days after the exclusion request is posted. The review of exclusion requests and objections will not exceed 90 days, creating a period of uncertainty for petitioners. Exclusions will generally last for one year from the date of signature.\textsuperscript{41}

As of November 15, 2018, Commerce received over 38,000 steel product exclusion requests and had processed 17,051 of them, with 12,616 granted and 4,435 exclusions denied.\textsuperscript{42}

As of the same date, Commerce received 6,504 aluminum exclusion requests and made decisions regarding 972 of them, with 830 exclusions granted and 142 denied.\textsuperscript{43}

Companies have complained about the intensive, time-consuming process to submit exclusion requests; the lengthy waiting period to hear back from Commerce, which has exceeded the 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.\textsuperscript{44} Alcoa, the largest U.S. aluminum maker, requested an exemption for all aluminum imported from Canada, where it operates three aluminum smelters. While the company benefits from higher aluminum prices as a result of the tariffs, it is also seeing increased costs in its own supply chain.\textsuperscript{45}

Several Members of Congress have raised concerns about the exclusion process. For example, in a letter to Commerce Secretary Ross, and at a hearing, Senate Finance Committee Chairman Orrin Hatch and Ranking Member Ron Wyden urged improvements to the product exclusion procedures on the basis that the detailed data required placed an undue burden on petitioners and objectors. They also suggested that the process appeared to bar small businesses from relying on trade associations to consolidate data and make submissions on behalf of multiple businesses. The letter further stated that Commerce had not instituted a clear process for protecting business proprietary information.\textsuperscript{46} A bipartisan group of House Members raised concerns about the speed

\textsuperscript{39} Docket Number BIS-2018-0006 (Steel); Docket Number BIS-2018-0002, (Aluminum).

\textsuperscript{40} A parallel requirement applies for aluminum requests.


\textsuperscript{43} Ibid.


\textsuperscript{46} Letter from Senate Finance Committee Chairman Orrin G. Hatch and Ranking Member Ron Wyden to Wilbur L.
of the review process and the significant burden it places on manufacturers, especially small businesses.\textsuperscript{47} The Members included specific recommendations such as allowing for broader product ranges to be included in a single request, allowing trade associations to petition, grandfathering in existing contracts to avoid disruptions, and regularly reviewing the tariffs’ effects and sunsetting them if they have a “significant negative impact.”\textsuperscript{48} In addition, the Cause of Action Institute filed a series of Freedom of Information Act (FOIA) requests to gain insight into the exclusion process. As of October 19, 2018, Commerce had not responded, leading the organization to file a lawsuit against the agency.\textsuperscript{49}

Commerce asserted that 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.\textsuperscript{50} BIS remains the lead agency involved in making final decisions regarding whether the requests are granted or denied.

Some Members have questioned the Administration’s processes and ability to pick winners and losers through granting or denying exclusion requests. On August 9, 2018, Senator Ron Johnson requested that Commerce provide specific statistics and information on the exclusion requests and process and provide a briefing to the Committee on Homeland Security and Governmental Affairs. Senator Elizabeth Warren requested that the Commerce Inspector General investigate the implementation of the exclusion process, including a review of the processes and procedures Commerce has established; how they are being followed; and if exclusion decisions are made on a transparent, individual basis, free from political interference. She also requested evidence that the exclusions granted meet Commerce’s stated goal of “protecting national security while also minimizing undue impact on downstream American industries,” and that the exclusions granted to date strengthen the national security of the United States.\textsuperscript{51} On September 6, 2018, Commerce announced a new rule to allow companies to rebut objections to petitions.\textsuperscript{52} The new rule, published September 11, 2018, includes new rebuttal and counter-rebuttal processes, 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.\textsuperscript{53}

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Ross, Secretary of Commerce, April 19, 2018.
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\textsuperscript{48} Ibid.
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\textsuperscript{51} Letter from Senator Elizabeth Warren to the Commerce Department, August 29, 2018.
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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.\(^{54}\)

**Tariffs Collected to Date**

As of November 7, 2018, the U.S. Customs and Border Protection assessed $2.87 billion and $829.4 million from the Section 232 tariffs on steel and aluminum, respectively. The tariffs collected are put in the general fund of the U.S. Treasury and are not allocated to a specific fund. Based on 2017 U.S. import values, annual tariff revenue from the Section 232 tariffs could be as high as $5.8 billion and $1.7 billion for steel and aluminum, respectively, but such estimates do not account for dynamic effects that may impact import flows.

Generally, higher import prices resulting from the tariffs should cause both import demand and tariff revenue to decrease over time, provided that U.S. production increases and sufficient domestic alternatives become available. Tariff revenue is also likely to decline as the Commerce Department grants additional product exclusions.

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.”\(^{55}\)

**U.S. Steel and Aluminum Industries and International Trade**

The United States competes for domestic and global market share with other major steel and aluminum producers. The most direct competition comes from China, the world’s largest raw steel and primary aluminum producing country.\(^{56}\) China’s capacity to make both metals influences the world market most directly by lowering steel and aluminum prices and thereby the profitability of domestic U.S. producers. The Organisation for Economic Co-operation and Development (OECD) began monitoring global steel production in the 1960s and tracks new capacity additions as well as plant and capacity closures. It notes that steel demand is weak globally but production continues to increase, driven by new investments around the world.\(^{57}\) So far, no similar effort is underway to monitor or address aluminum overcapacity globally; however, the Aluminum Association, a U.S. industry trade group, and other national aluminum

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associations, have requested that the G-20 create a global multilateral and governmental forum on aluminum overcapacity, similar to the forum on steel.  

In 2017, U.S. imports of steel and aluminum products covered by the Section 232 tariffs totaled $29.0 billion and $17.4 billion, respectively (see Figure 3). Over the past decade, steel imports have fluctuated significantly, by value and quantity, while imports of aluminum have increased steadily. The expiration of temporary exclusions from the tariffs for Canada, Mexico, and the EU are economically significant for U.S. trade in both products. In 2017, these trading partners were the top three suppliers of U.S. steel imports facing the import tariff, together accounting for 47% of relevant U.S. steel imports.  

Canada alone accounted for 41% of relevant U.S. aluminum imports in 2017, followed by China (11%) and Russia (9%). The countries with permanent exclusions from the tariff accounted for 20% of U.S. steel imports in 2017 and less than 5% of U.S. aluminum imports (see Appendix C).

![Figure 3. U.S. Steel and Aluminum Imports Subject to Section 232 Tariffs](source: Created by CRS using data from Census Bureau on HTS products included in the Section 232 proclamations.)

### Domestic Steel and Aluminum Manufacturing and Employment

In 2017, U.S. steelmakers employed 139,900 workers (Figure 4), accounting for 1.1% of the nation’s 12.4 million factory jobs. Employment in the steel industry has been declining for many years as new technology, particularly the increased use of electric arc furnaces to make steel, has reduced the demand for workers.  

According to the Bureau of Labor Statistics, labor productivity

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

60 See CRS In Focus IF10902, *Trade Actions and U.S. Steel Manufacturing*, by Michaela D. Platzer, for a related discussion on the domestic steel industry.
in steelmaking nearly tripled since 1987 and rose 15% over the past decade.\textsuperscript{61} Hence, even a significant increase in domestic steel production is likely to result in a relatively small number of additional jobs.

Aluminum manufacturers employed 58,100 workers in 2017, a figure that has changed little since the 2007-2009 recession. Domestic smelting of aluminum from bauxite ore, which requires large amounts of electricity, has been in long-term decline, and secondary aluminum produced from recycled scrap melted in a smelter now accounts for the majority of domestic aluminum production.\textsuperscript{62} Imports of secondary unwrought aluminum are not covered by the Section 232 aluminum trade action.\textsuperscript{63}

**Figure 4. Steel and Aluminum Manufacturing Employment**

![Graph showing steel and aluminum manufacturing employment](image)

**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).

**Notes:** * 2017 figures are estimated.

Steelmaking and aluminum smelting are both extremely capital intensive. As a result, even small changes in output can have major effects on producers’ profitability. Domestic steel producers have operated at 78% or less of production capacity in recent years.\textsuperscript{64} Aluminum smelters in the United States operated at about 37% of production capacity in 2017.\textsuperscript{65} A stated aim of the metals tariffs is to enable U.S. producers in both sectors to use an average of 80% of their production capacity, which the Section 232 reports deem necessary to sustain adequate profitability and continued capital investment.\textsuperscript{66}

**Global Production Trends**

The OECD Global Forum on Steel Excess Capacity estimates global steel overcapacity to be at more than 700 million metric tons, with more than half (425 million metric tons) accounted for by China.\textsuperscript{67} Relatively little Chinese steel and aluminum enter the U.S. market directly, due to


\textsuperscript{62} For more information on domestic aluminum manufacturing, see CRS In Focus IF10998, *Effects of U.S. Tariff Action on U.S. Aluminum Manufacturing*, by Michaela D. Platzer.

\textsuperscript{63} The Section 232 trade action includes certain semi-finished wrought aluminum products, such as bars, rods, foil, and wire, which can be manufactured using primary aluminum, secondary aluminum, or a combination of the two.

\textsuperscript{64} The U.S. Federal Reserve Board publishes industrial production and capacity utilization data by industry.


extensive U.S. dumping and subsidy determinations, but the large amount of Chinese production acts to depress prices globally. China has indicated that it plans to reduce its crude steelmaking capacity by 100-150 million metric tons over the five-year period from 2016 to 2020.\(^\text{68}\)

Metals imports should be put in the context of U.S. production. In 2017, the United States produced more than twice the amount of steel it imported. According to ITA, import penetration—the share of U.S. demand met by steel imports—reached 33% in 2016, compared to 23% in 2006.\(^\text{69}\) Some segments of the domestic steel industry, such as slab converters, import a sizable share of their semi-finished feedstock from foreign suppliers, totaling nearly 8 million tons in 2017.\(^\text{70}\) In the primary aluminum market, U.S. net import reliance rose to 61% in 2017 from 21% in 2013, according to the U.S. Geological Survey.\(^\text{71}\) Most U.S. foreign trade in steel and aluminum is with Canada (see Appendix C).

### Policy and Economic Issues

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

U.S. trading partners’ responses to the 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. Some companies have pursued litigation,\(^\text{72}\) and may also seek alternative markets for their own products to avoid U.S. tariffs.

### Retaliation

Several major U.S. trading partners have proposed or are currently imposing retaliatory tariffs in response to the U.S. actions (see Table 1 below). The process of retaliation is complex given multiple layers of relevant international rules and the potential for unilateral action, which may or may not adhere to those existing rules. Both through agreements at the WTO and in bilateral and regional free trade agreements (FTAs), the United States and its trading partners have agreed to maintain certain tariff levels. Those same agreements include rules on potential responses, including formal dispute settlement procedures and in some cases commensurate tariffs, when

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one party increases its tariffs above agreed-upon limits.\textsuperscript{73} Other exceptions, such as antidumping tariffs, countervailing duties, and safeguards, are addressed in WTO agreements.\textsuperscript{74}

Most of the retaliatory actions of U.S. trading partners to date have been notified to the WTO pursuant to the Agreement on Safeguards. These retaliatory notifications listed below (see Table 1) are in addition to requests for consultations that are the first step in WTO dispute settlement proceedings (see “WTO Implications”). In addition, Japan submitted a notification to the WTO, but has yet to announce a list of specific products. Notifications by other countries may follow.

Table 1. Retaliatory Actions by U.S. Trading Partners
Compiled as of October 10, 2018

<table>
<thead>
<tr>
<th>Trading Partner</th>
<th>Estimated Value of Targeted U.S. Exports</th>
<th>Effective Date</th>
<th>Example Products Targeted</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>$3.0 billion</td>
<td>April 2, 2018</td>
<td>fruits, vegetables, wine, meats, steel products, aluminum waste, and other items</td>
</tr>
<tr>
<td>Turkey</td>
<td>$1.8 billion</td>
<td>June 21, 2018, initially, and an additional raise in tariffs rates was announced on August 14, 2018\textsuperscript{a}</td>
<td>foodstuffs, paper, plastic, structural steel, machinery, vehicles, and other items</td>
</tr>
<tr>
<td>European Union (EU) 1\textsuperscript{st} Set</td>
<td>$3.2 billion</td>
<td>June 22, 2018</td>
<td>steel and aluminum products, bourbon whiskey, motorcycles, tobacco products, pleasure boats, and other items</td>
</tr>
<tr>
<td>EU 2\textsuperscript{nd} Set</td>
<td>$4.2 billion</td>
<td>2021</td>
<td>cranberries, denim jeans, footwear, washing machines, and other items</td>
</tr>
<tr>
<td>Canada</td>
<td>$12.7 billion</td>
<td>July 1, 2018</td>
<td>steel, aluminum, coffee, ketchup, orange juice, paper products, and other consumer goods</td>
</tr>
<tr>
<td>Mexico</td>
<td>$3.7 billion</td>
<td>June 5, 2018, for the majority of products, with remaining effective July 5, 2018\textsuperscript{b}</td>
<td>pork, apples, potatoes, bourbon, cheeses, and other items</td>
</tr>
<tr>
<td>Russia 1\textsuperscript{st} Set</td>
<td>$0.35 billion</td>
<td>Announced on July 6, 2018\textsuperscript{c}</td>
<td>road construction equipment, oil and gas equipment, tools and other items</td>
</tr>
<tr>
<td>Russia 2\textsuperscript{nd} Set</td>
<td>TBD</td>
<td>2021</td>
<td>TBD</td>
</tr>
</tbody>
</table>


\textsuperscript{74} 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, \textit{Safeguards: Section 201 of the Trade Act of 1974}, by Vivian C. Jones, and CRS In Focus IF10018, \textit{Trade Remedies: Antidumping and Countervailing Duties}, by Vivian C. Jones.
<table>
<thead>
<tr>
<th>Trading Partner</th>
<th>Estimated Value of Targeted U.S. Exports</th>
<th>Effective Date</th>
<th>Example Products Targeted</th>
</tr>
</thead>
<tbody>
<tr>
<td>India</td>
<td>$1.4 billion</td>
<td>December 17, 2018</td>
<td>nuts, apples, steel products, motorcycles, and other items</td>
</tr>
</tbody>
</table>


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

- a. Turkey announced on August 18, 2018, an increase in its retaliatory tariff rates, in response to the Trump Administration’s decision to increase the U.S. tariffs on Turkish steel to 50%. It is unclear from the notice when these additional tariff rates went fully into effect.
- b. One commodity code listed on Mexico’s notice is newly established and does not have any reported data for 2017; to estimate the amount of trade, CRS used the higher-level 6-digit version of the code (160100).
- d. Russia published its list of retaliatory tariffs rates and products on July 6, 2018. The tariffs appear to go into effect within 30 days of the publication.

FTA partner countries may also claim that the increase in U.S. tariff rates violates U.S. FTA commitments and seek recourse through those agreements. For example, Canada and Mexico, U.S. partners in NAFTA, claimed that the U.S. actions violate commitments in both NAFTA and the WTO agreements. Canada is launching a dispute under the FTA’s dispute settlement provisions in addition to actions at the WTO, and began imposing tariffs on up to $12.7 billion of U.S. exports of steel, aluminum, and other products in July.\(^\text{75}\) Mexico also published its list of retaliatory tariffs on agricultural and other products that affect approximately $3.75 billion in U.S. exports.\(^\text{76}\)

\(^\text{75}\) “Canada Files Promised NAFTA, WTO Cases Challenging U.S. 232 Tariffs,” World Trade Online, June 1, 2018; Canada Department of Finance, “Notice of intent to impose countermeasures action against the United States in response to tariffs on Canadian steel and aluminum products,” May 31, 2018.

\(^\text{76}\) Anthony Harrup and Santiago Perez, “Mexico Details Its List of Retaliatory Tariffs Against U.S., Adds Bourbon,” Wall Street Journal, June 5, 2018; “Decreto por el que se modifica la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación, el Decreto por el que se establece la Tasa Aplicable durante 2003, del Impuesto General de Importación, para las mercancías originarias de América del Norte y el Decreto por el que se establecen diversos Programas de Promoción Sectorial,” Diario Oficial de la Federacion, May 6, 2018.
The prospect of escalating tariffs by U.S. trading partners in retaliation to the Section 232 tariff actions by the Trump Administration magnifies the potential effects of the Section 232 tariffs. From an economic perspective, retaliation increases the scope of industries affected by the tariffs. U.S. farmers, for example, have consistently voiced concern that agriculture exports are being targeted for retaliation and fear losing market share abroad if they are displaced by suppliers from other countries.\footnote{Monica Davey and Patricia Cohen, “Trade War Prospect Shakes Part of Trump Base: Midwest Farmers,” \textit{New York Times}, March 10, 2018. For more information, see CRS Insight IN10880, \textit{China’s Retaliatory Tariffs on Selected U.S. Agricultural Products}, by Jenny Hopkinson.} Some economic models also estimate that retaliation could significantly increase the potential drag on economic growth, while some show minimal impact.

Retaliatory actions may also heighten concerns over the potential strain the Section 232 tariffs place on the international trading system. Many U.S. trading partners view the Section 232 actions as protectionist and in violation of U.S. commitments at the WTO and in U.S. FTAs, while the Trump Administration views the actions within its rights under those same commitments.\footnote{For example, see China, “United States – Certain Measures on Steel and Aluminum Products Request for Consultations by China,” WTO WT/DS544/1, April 9, 2018; and United States, “Certain Measures on Steel and Aluminum Products,” WTO WT/DS544/2, April 17, 2018.} If the dispute settlement process in those agreements cannot satisfactorily resolve this conflict, it could lead to further unilateral actions and a tit-for-tat process of increasing retaliation.

**WTO Implications**

The President’s imposition of tariffs on certain imports of steel and aluminum products,\footnote{For legal background on the tariff measures, see CRS Legal Sidebar LSB10097, \textit{UPDATE: Threats to National Security Foiled? A Wrap Up of New Tariffs on Steel and Aluminum}, by Caitlaine Devereaux Lewis.} as well as Commerce’s exemption of certain WTO members’ products from such tariffs, may have implications for the United States under WTO agreements. On April 9, 2018, China took the first step in challenging the executive branch’s actions as violating U.S. obligations under the WTO agreements (particularly the Agreement on Safeguards) by requesting consultations with the United States.\footnote{Request for Consultations by China, \textit{U.S.—Certain Measures on Steel and Aluminum Products}, WT/DS/544/1 (April 9, 2018) (hereinafter, Request for Consultations). This report does not examine potential implications under other international agreements to which the United States is a party, such as other U.S. free trade agreements. Notably, the executive branch’s actions are also subject to legal challenge in U.S. courts. On April 5, 2018, the United States Court of International Trade denied a motion for a preliminary injunction that sought to prevent the United States from collecting the import tariffs on certain steel products until the court ruled upon legal challenges to the tariffs. Order Denying Motion for Preliminary Injunction at 1–4, Severstal Export GMBH v. United States, No. 18-00057, 2018 WL 1705298 (Ct. of Int’l Trade April 5, 2018). The motion was made by a Swiss company and its U.S. affiliate, both wholly-owned subsidiaries of a Russian steel producer. \textit{Id.}} Under WTO dispute settlement rules, members must first attempt to settle their disputes through consultations. If these fail, the member initiating a dispute may request the establishment of a dispute settlement panel composed of trade experts to determine whether a country has violated WTO rules.\footnote{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, \textit{Id.} art. 17(1). The text of the DSU and other WTO agreements discussed in this report are available at https://www.wto.org/english/docs_e/legal_e/legal_e/final_e.htm.} In October, China requested the formation of a panel.\footnote{WTO Member may appeal a panel's report to the WTO Appellate Body, \textit{Id.} art. 17(1). The text of the DSU and other WTO agreements discussed in this report are available at https://www.wto.org/english/docs_e/legal_e/legal_e/final_e.htm.} Other WTO members have requested consultations with the United States, or joined existing requests, with some also requesting to move to the panel stage (see Figure 5).
In its request, China alleged that the U.S. tariff measures and exemptions are contrary to U.S. obligations under several provisions of the GATT, the foundational WTO agreement that sets forth binding international rules on international trade in goods.\textsuperscript{83} In particular, China alleged that the measure violates GATT Article II, which generally prohibits members from imposing duties on imported goods in excess of upper limits to which they agreed in their Schedules of Concessions and Commitments.\textsuperscript{84} It further alleged that Commerce’s granting of exemptions from the import tariffs to some WTO member countries, but not to China, violates GATT Article I, which obligates the United States to treat China’s goods no less favorably than the goods of other WTO members (i.e., most-favored-nation treatment).\textsuperscript{85} China also maintained that the Section 232 tariff measures are “in substance” a safeguards measure intended to alleviate injury to a domestic industry from increased quantities of imported steel that competes with domestic steel, but that the United States did not make the proper findings and follow the proper procedures for imposing such a measure as required by the GATT and WTO Safeguards Agreement.\textsuperscript{86}

\textsuperscript{83} General Agreement on Tariffs and Trade 1994 (GATT) art. II.

\textsuperscript{84} 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. \textit{E.g.}, GATT art. XXVIII (establishing procedures for negotiations among WTO Members on changes to a Member’s bound tariff rates in its schedules).

\textsuperscript{85} 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.”

\textsuperscript{86} Request for Consultations at 2.
Figure 5. WTO Cases Related to the U.S. Section 232 Actions  
As of August 20, 2018

<table>
<thead>
<tr>
<th>COMPLAINANT</th>
<th>Date Submitted</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHINA*</td>
<td>April 5, 2018</td>
</tr>
<tr>
<td>INDIA</td>
<td>May 18, 2018</td>
</tr>
<tr>
<td>EUROPEAN UNION*</td>
<td>June 1, 2018</td>
</tr>
<tr>
<td>CANADA*</td>
<td>June 1, 2018</td>
</tr>
<tr>
<td>RUSSIA*</td>
<td>June 29, 2018</td>
</tr>
<tr>
<td>NORWAY*</td>
<td>June 12, 2018</td>
</tr>
<tr>
<td>MEXICO*</td>
<td>June 5, 2018</td>
</tr>
<tr>
<td>SWITZERLAND</td>
<td>July 9, 2018</td>
</tr>
<tr>
<td>TURKEY*</td>
<td>August 15, 2018</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>REQUESTS TO JOIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thailand, EU, Russia, India, Hong Kong</td>
</tr>
<tr>
<td>Thailand, EU, China, India, Hong Kong</td>
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<tr>
<td>Thailand, EU, Russia, China, Hong Kong</td>
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<td>Thailand, EU, Russia, China, Hong Kong</td>
</tr>
<tr>
<td>Thailand, EU, Russia, China, Hong Kong</td>
</tr>
</tbody>
</table>

Source: CRS based on WTO filings.  
Notes: * indicates request for establishment of dispute settlement panel.

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 GATT 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

(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. . .

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87 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.
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 and cannot evaluate whether the WTO member’s use of the exception is proper. Though this exception has been invoked several times throughout the history of the WTO and its predecessor agreement, the GATT 1947, it has yet to be interpreted by a WTO dispute settlement panel. Accordingly, there is little guidance as to (1) whether a WTO panel would decide, as a threshold matter, that it had the authority to evaluate whether the United States’ invocation of the exception was proper; and (2) how a panel might apply the national security exception, if invoked, in any dispute before the WTO involving the new steel and aluminum tariffs. In the past, however, WTO members have expressed concern that overuse of the exception will undermine the world trading system because countries might enact a multitude of protectionist measures under the guise of national security.

If the dispute over steel and aluminum tariffs proceeds to a WTO panel, as some members have requested, and the panel renders an adverse decision against the United States, the United States would be expected to remove the tariffs, generally within a reasonable period of time, or face the possibility of paying compensation to the complaining member or being subject to sanctions. Such sanctions might include the complaining member imposing higher duties on imports of selected products from the United States. However, China has already begun imposing its own duties on selected U.S. exports without awaiting the outcome of a dispute settlement proceeding, perhaps because it often takes years before the WTO’s Dispute Settlement Body authorizes a prevailing WTO member to retaliate.94

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

89 See, e.g., sources cited supra note 70.


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

92 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.


94 Evaluation of the WTO Dispute Settlement System: Results to Date, WORLD TRADE ORG., https://www.wto.org/
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. On July 16, 2018, the United States filed its own WTO complaints over the retaliatory tariffs imposed by five countries (Canada, China, EU, Mexico and Turkey) in response to U.S. actions, and in late August filed a similar case against Russia.

International Efforts to Address Overcapacity

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

Past Administrations have worked to address the issue of steel overcapacity. President George W. Bush, for example, initiated international discussions on global capacity reduction and improved trade discipline in the steel industry as part of his general steel announcement of 2001. 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 its efforts to negotiate an agreement among all major steel-producing countries to ban domestic subsidies for steel mills.

The Obama Administration also participated in international efforts to curb steel imports, including the launch of the G-20 Global Forum on Steel Excess Capacity in 2016, another venue that sought to address the challenges of excess capacity in steel worldwide. 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. The same year, as part of the U.S.-China Strategic and Economic Dialogue (SE&D)

In September 2018, the OECD Forum agreed on process that 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.\footnote{Global Forum on Excess Steel Capacity, Ministerial Report, September 20, 2018, https://www.g20.org/sites/default/files/gfsec_ministerial_report_2018.pdf.}

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. Akin to the global steel industry, aluminum producers contend that excess production has been largely caused by government intervention, subsidization, and other market-distorting practices, among other factors.\footnote{The Aluminum Association, Aluminum Excess Capacity: Time to Act, June 10, 2018, https://www.aluminum.org/Timeforaction.}

As noted, the U.S. Aluminum Association and some of its international counterparts seek to establish a global forum to address aluminum excess capacity.

The Trump Administration’s Section 232 actions have led multiple U.S. trading partners such as the EU and Canada to initiate their own safeguard investigations 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 is pursuing joint action on industrial overcapacity in other forums. The USTR, Ambassador Lighthizer, met with his EU and Japanese counterparts in Paris in May 2018, and the three countries agreed to concrete steps to address “nonmarket-oriented policies and practices that lead to severe overcapacity, create unfair competitive conditions for our workers and businesses, hinder the development and use of innovative technologies, and undermine the proper functioning of international trade.”\footnote{The U.S. Trade Representative, “USTR Statement on Meeting of the Global Forum on Steel Excess Capacity,” USTR Press Releases, September 2018.}

The ministers agreed to work toward negotiation of new international rules on subsidies and state-owned enterprises and improved compliance with WTO transparency commitments.\footnote{The U.S. Trade Representative, “Joint Statement on Trilateral Meeting of the Trade Ministers of the United States, Japan, and the European Union,” May 2018.}

The parties also agreed to cooperate on their concerns with third parties’ technology transfer policies and practices\footnote{Ibid, Annex Statement 2, Joint Statement on Technology Transfer Policies and Practices.}

and issued a joint statement containing a list of factors that identify if market conditions for competition exist.\footnote{Ibid, Annex Statement 3, Joint Statement on Market Oriented Conditions.}

The parties continue to work together, aiming to identify signals for nonmarket policies, enhance information sharing, and work with third parties to ensure market economy conditions exist and discussion potential new rules and means of enforcement.\footnote{Ibid, Annex Statement 1, EU-Japan-US scoping paper to define the basis for the development of stronger rules on industrial subsidies.}

\section*{Section 232 Investigations: Overview and Issues for Congress}


Ibid, Annex Statement 1, EU-Japan-US scoping paper to define the basis for the development of stronger rules on industrial subsidies.
In addition, in November 2018, the United States, EU, Japan, Argentina and Costa Rica put forward a joint proposal to increase transparency, proposing incentives for compliance or penalties for noncompliance with WTO notification reporting requirements. U.S. unilateral actions, however, may limit other countries’ willingness to participate in multilateral forums.

Potential Economic Impact

The Section 232 tariffs have begun to affect various stakeholders in the U.S. economy, prompting reactions from several Members of Congress, some in support and others voicing concern. Congress has also held a number of hearings to examine the issue. 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. agriculture producers. The Senate Finance Committee also held a hearing with Commerce Secretary Ross to discuss the Administration’s Section 232 investigations. In general, the tariffs are expected to benefit the domestic steel and aluminum producers, leading to potential higher steel and aluminum prices and expansion in production in those sectors, while potentially negatively affecting consumers and downstream domestic industries (e.g., manufacturing and construction) due to higher costs of input materials. In addition, retaliatory tariffs by other countries may impact U.S. exports, magnifying the negative impact of the Section 232 tariffs as noted earlier.

Economic Dynamics of the Tariff Increase

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

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

  U.S. firms have begun paying increased prices for steel and aluminum purchased from abroad. For example, CP Industries, a maker of steel cylinders based in McKeesport, PA, has begun paying tariffs on imports of certain Chinese steel


pipes it asserts cannot be produced in sufficient quantity in the United States to meet its demands. The company claims this raises the costs of its production by roughly 10%. The higher input costs potentially give foreign competitors an advantage in the U.S. market and abroad.

- **Demand for the imported goods facing the tariffs is likely to decrease, while demand for those goods produced domestically or imported from countries excluded from the tariff is likely to increase.** Consumers and downstream firms’ sensitivity to the price increase (their price elasticity of demand) will depend in large part on the degree to which the steel and aluminum products produced domestically, or imported from exempted countries, are sufficient substitutes for the products facing the tariffs.

- **The price and output of steel and aluminum produced domestically or imported from countries exempted from the tariffs are likely to increase.** As consumers of the products facing the tariffs shift their demand to lower- or zero-tariff substitutes, domestic producers are likely to respond with a combination of increased output and prices. Resource constraints that may limit or slow an expansion of output could cause prices to increase more rapidly. The low U.S. unemployment rate suggests such constraints may include frictions in shifting labor from other domestic industries into steel and aluminum production. In addition to reacting to higher-cost production and supply constraints, domestic steel and aluminum producers may also increase prices simply as a strategic response to the higher prices charged by their foreign competitors subject to the tariffs.

In an anticipation of higher domestic demand and the ability to charge higher prices on U.S. steel and aluminum, some producers have announced investment and production increases. For example, U.S. Steel Corporation has announced plans to reopen two blast furnaces in Granite City, IL, and Century Aluminum has stated its intent to increase production at a facility in Kentucky. Additional shifts in U.S. production are likely once the effects of the tariffs on U.S. market conditions become clear.

- **Input costs for downstream domestic producers are likely to increase.** As prices likely rise in the United States for the goods subject to the tariffs, domestic industries that use steel and aluminum in their products (“downstream” industries, such as auto manufacturers and oil producers) will face higher input

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


costs. Higher input costs for downstream domestic producers are likely to lead to some combination of lower profits for producers and higher prices for consumers, which in turn, could dampen demand for downstream products and result in a reduction of output in these sectors, and possibly employment declines. For example, press reports state that Mid Continent Nail Corporation of Missouri, a manufacturer reliant on imported steel wire, could be forced to shut down operations, including 500 manufacturing jobs, as a result of the tariffs.\footnote{Alisa Nelson, "Trump Tariffs Blamed for Potential Closure of Major Southeast Missouri Employer," \textit{Missourinet}, June 20, 2018.}

- **Industries unrelated to steel and aluminum could face negative consequences due to retaliation by the countries facing the Section 232 tariffs as well as a general slowdown in trade volumes.** Canada, China, Mexico, and the EU, the four largest U.S. export markets, have now imposed retaliatory tariffs on U.S. exports, including many U.S. agricultural goods. The retaliatory tariffs would be expected to decrease demand for U.S. exports and would give U.S. exporters an incentive to manufacture abroad to avoid the tariffs. For example, Harley Davidson has announced its intent to shift some of its production out of the United States in order to remain competitive in the EU market.\footnote{"U.S. Trade War with Europe Revs Up as Harley-Davidson Shifts Production," \textit{Financial Times}, June 25, 2018.}

Workers and firms involved in the shipping and transportation industries could also face downward pressure on demand if trade slows. For example, the Northwest Seaport Alliance (NWSA) representing the ports of Tacoma and Seattle estimates that approximately $8 billion in annual trade through their ports will be affected by U.S. Section 232 tariffs and corresponding foreign retaliatory tariffs.\footnote{Testimony of Northwest Seaport Alliance CEO John Wolfe, in U.S. Congress, House Committee on Ways and Means, \textit{Effects of Tariff Increases on the U.S. Economy and Jobs}, April 12, 2018, testimony.} If the tariffs reduce trade volumes, as economic models would generally suggest, this could reduce employment in the shipping and transportation industries.

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

**Assessing the Overall Economic Impact**

From a global standpoint, tariff increases on steel and aluminum are likely to result in an unambiguous welfare loss due to what most economists consider is a misallocation of resources caused by shifting production from lower-cost to higher-cost producers. On the other hand, some see the Administration's trade actions as addressing longstanding issues of fairness that are intended to provide U.S. producers with a more level playing field. Looking solely at the
domestic economy, the net welfare effect is unclear, but also likely negative. Generally, economic models would suggest the negative impact of higher prices on consumers and industries using the imported goods is likely to outweigh the benefit of higher profits and expanded production in the import-competing industry and the additional government revenue generated by the tariff. It is theoretically plausible to generate an overall positive welfare effect for the domestic economy if the foreign producers absorb a large enough portion of the tariff increase. Given the current excess capacity and intense price competition in the global steel and aluminum industries, however, this level of tariff absorption by foreign firms seems unlikely. Moreover, retaliation by foreign governments would erode this welfare gain.

The direct economic effects of the Section 232 tariffs on steel and aluminum may be limited due to the relatively small share of economic activity directly affected. The recent extension of the steel and aluminum tariffs to U.S. imports from Canada, Mexico, and the EU is economically significant, as these trading partners accounted for nearly 50% of U.S. imports of both products by value in 2017. However, these products still represent a relatively small share of total U.S. imports: in 2017 U.S. steel and aluminum imports were $29 billion and $17 billion, respectively, roughly 2% of all U.S. imports. Various stakeholder groups have prepared quantitative estimates of the costs and benefits across the economy. Specific estimates from these studies should be interpreted with caution given their sensitivity to modeling assumptions and techniques, but generally they suggest a small negative overall effect on U.S. gross domestic product (GDP) from the tariffs with employment shifts into the domestic steel and aluminum industries and away from other sectors in the economy.\footnote{For an example of two modeling studies with contrasting results, see Joseph Francois and Laura M. Baughman, Trading Partners Respond: The Estimated Impacts of Tariffs on Steel and Aluminum, Trade Partnership Worldwide, March 13, 2018, http://tradepartnership.com/wp-content/uploads/2018/03/232RetaliationPolicyBrief.pdf; and Jeff Ferry, Steel and Aluminum Tariffs Produce Minimal Impact on Jobs, GDP: CPA Economic Model Refutes Alarmist Trade Partnership Study, Coalition for a Prosperous America, March 20, 2018, https://d3n8a8pro7vhmx.cloudfront.net/prosperousamerica/pages/4216/attachments/original/1521555989/180320_study_Ferry_232_tariffs1.pdf.}

Ultimately the economic significance of the tariffs will largely depend on variables that remain in flux: the range of product exclusions, further negotiations on country exemptions, and the degree to which other countries retaliate. A range of U.S. stakeholders have objected to the Administration extending the tariffs to Canada, Mexico, and the EU, and the Administration states that negotiations remain ongoing, suggesting the possibility of future adjustments to the tariff coverage. Meanwhile, more than 38,000 steel and 6,500 aluminum product exclusions have been filed, which if granted would limit the economic impact of the trade measures. Finally, retaliation has an immediate negative economic impact on the industries and sectors (such as agriculture) subject to retaliatory tariffs, and could set off a tit-for-tat process of increasing global protectionism, reducing trade and growth. For example, analysis by the Federal Reserve Bank of Dallas estimates that an extreme scenario of prohibitively high retaliatory tariffs affecting all U.S.-China and U.S.-EU goods trade could result in a reduction of U.S. GDP by 3.5%.\footnote{Michael Sposi and Kelvinder Virdi, Steeling the U.S. Economy for the Impacts of Tariffs, Federal Reserve Bank of Dallas, Economic Letter Vol. 13, No. 5, April 2018, https://www.dallasfed.org/-/media/documents/research/eclett/2018/el1805.pdf.}

Section 232 Auto Investigation

As mentioned, subsequent to the steel and aluminum investigations, the Trump Administration initiated a third Section 232 investigation into the imports of automobiles, including SUVs, vans
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and light trucks, and automotive parts. The Commerce Department requested comments from stakeholders on the impact of these imports on national security, identifying a broad set of factors related to national defense and the national economy for consideration.\textsuperscript{122} As many foreign auto manufacturers have established facilities in the United States, Commerce specifically requested information on how the impact may differ when accounting for “U.S. production by majority U.S.-owned firms is considered separately from U.S. production by majority foreign-owned firms.”

The value of U.S. imports potentially covered under the new investigation is significantly greater than that of steel and aluminum imports. With complex global supply chains, industry dynamics such as the existence of foreign-owned auto manufacturing facilities in the United States, and the potential for further retaliation by trading partners if tariffs are imposed as a result of the investigation, the economic consequences could be substantial.\textsuperscript{123} According to Ford Motor Co.’s executive vice president and president of global operations, Joe Hinrichs, “the auto industry is a global business. The benefits of scale and global reach are important ... The big companies that we compete against—Toyota, Volkswagen, General Motors, Nissan, Hyundai, Kia—are all global in nature because we realize the benefits of sharing the engineering, the platforms and scale, and our supply base.”\textsuperscript{124}

Some Members and auto industry representatives have spoken out in opposition to the new Section 232 investigation. The Driving American Jobs Coalition was created to oppose the potential tariffs and is comprised of a coalition of industry groups representing auto manufacturers, parts suppliers, auto dealers, parts distributors, retailers, and vehicle service providers.\textsuperscript{125} Others view the investigation as a tactical move by the Administration to pressure trade negotiating partners as the President continues to threaten auto tariffs.\textsuperscript{126} Three groups have voiced support for at least limited measures to address auto imports: United Automobile Workers, the United Steelworkers, and the Forging Industry Association.\textsuperscript{127}

\section*{Issues for Congress}

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

\subsection*{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 U.S. International Trade Commission, granting the President broad discretion.

\begin{enumerate}
\item To illustrate the complexity of auto negotiations, see CRS In Focus IF10835, NAFTA Motor Vehicle Talks Reopen Old Trade Debate, by Bill Canis.
\end{enumerate}
in applying this authority. Should Congress disapprove of the President’s use of the statute, its current recourse is limited to passing new legislation or using informal tools to pressure the Administration (e.g., putting holds on presidential nominee confirmations). Some Members and observers have suggested that Congress should require additional steps in the Section 232 process, such as requiring an economic impact study by the U.S. International Trade Commission, congressional consultation or approval of any new tariffs (see, for example, S. 3013), or allowing for a resolution of disapproval as exists in the case of petroleum imports (see for example, S. 3329). In addition, some Members and observers have suggested that Congress should revisit the delegation of its constitutional authority more broadly, such as by requiring congressional review of executive branch trade actions generally (see, for example, H.R. 5760, S. 177, and H.R. 6923).

Legislative Responses to Retaliatory Tariffs

Several major U.S. trading partners have proposed or are currently imposing retaliatory tariffs in response to the U.S. actions. Some Members of Congress have proposed legislation that responds to the potential economic impact of these foreign retaliatory tariffs. Some proposals consider expanding programs like trade adjustment assistance to include assistance for workers, firms, and farmers who are harmed by foreign retaliation (see, for example, see H.R. 6395, H.R. 6396, and S. 3258). Other measures propose increased funding and programming for certain agricultural export programs to help farmers find new markets for their exports (see, for example, H.R. 6699 and S. 3407).

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 is considered part of the U.S. defense industrial base according to U.S. law and is also a top source of U.S. imports of steel and aluminum.

National security is not clearly defined in the statute, allowing for ambiguity and alternative interpretations by an Administration. International trade commitments both at the multilateral and FTA level generally include broad exceptions on the basis of national security. The Trump Administration argues its Section 232 actions are permissible under these exceptions, while many U.S. trading partners claim the actions are unrelated to national security. If the United States invokes the national security exemption in what may be perceived to be an arbitrary way, it could similarly encourage 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, Congress could more explicitly define “national security” and the factors to be considered in a Section 232

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128 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.

129 The Administration has also announced an assistance program for farmers harmed by foreign retaliation, through the U.S. Department of Agriculture; for more information see CRS Report R45310, Farm Policy: USDA’s Trade Aid Package, by Randy Schnepf et al.

investigation. Alternatively, Congress could consider an amendment to Section 232 similar to the option for congressional disapproval for Section 232 actions related to oil or petroleum.

Establishing New International Rules

Addressing the specific market-distorting practices that are the root causes of steel and aluminum overcapacity (e.g., government intervention, subsidization) may require updating or amending existing agreements. Broad WTO negotiations for new multilateral rules, which may have offered opportunity to address some of these issues, have stalled.\textsuperscript{131} Recent U.S. FTA negotiations, including the recently-concluded USMCA, include related disciplines (e.g., by establishing rules on state-owned enterprises or anticorruption), but the United States is not currently engaged in an FTA negotiation with China or other key countries driving overcapacity. To address these issues, Congress could consider establishing specific or enhanced new negotiating objectives for trade agreement negotiations, potentially through new or modified Trade Promotion Authority (TPA) legislation. Congress could also consider directing the executive branch to prioritize engagement in such negotiations, by, for example, endorsing the current OECD discussions or the trilateral negotiations announced by USTR with the EU and Japan to address nonmarket practices, including subsidies, state-owned enterprises, and technology transfer requirements, mostly aimed at China.

Effects on Trade Liberalization Efforts

Some argue that the U.S. unilateral tariff actions could limit other countries’ interest in engaging in negotiations to reduce international barriers—efforts historically championed by the United States. Such concerns are amplified given the proliferation of trade liberalization agreements outside the WTO and therefore with the potential for discriminatory effects on countries not participating, including the United States.\textsuperscript{132} To address this concern, Congress could investigate, or ask the U.S. International Trade Commission to investigate, the potential strategic and economic value to the United States of engaging in negotiations to join existing or establish new trade agreements.

Impact on the Multilateral Trading System

Some analysts argue that the United States risks undermining the international system it helped create when it invokes unilateral trade actions that may violate core commitments and with regard to broad use of national security exemptions. These observers fear that disagreements at the WTO on these issues may be difficult to resolve through the existing dispute settlement procedures given the concerns over national sovereignty that would likely be raised if a WTO dispute settlement panel issued a ruling relating to national security. Furthermore, actions by the United States that do not make use of the multilateral system’s dispute settlement process may open the United States to criticism and could impede U.S. efforts to use the multilateral system for its own enforcement purposes. For example, China called on other parties such as the EU to join it in opposition to the U.S. actions on Section 232, while simultaneously promoting domestic policies often seen as undermining WTO rules.\textsuperscript{133} Congress could potentially address these concerns by

\textsuperscript{131} For more information, see CRS In Focus IF10002, \textit{The World Trade Organization}, by Ian F. Fergusson and Rachel F. Fefer.
\textsuperscript{132} For more information, see CRS Report R45198, \textit{Bilateral and Regional Trade Agreements: Issues for Congress}, by Brock R. Williams.
conducting increasing oversight of the Administration’s actions by inviting testimony from multiple parties and also, considering legislation to establish more stringent criteria, or requiring congressional approval of any use of Section 232, among other possible actions.

Impact on Broader International Relationships

The U.S. unilateral actions under Section 232 have raised the level of tension with U.S. trading partners and could pose risks to broader international economic cooperation. For example, trade tensions between the United States and its traditional allies contributed to the lack of consensus at the conclusion of the recent G-7 summit in June 2018. 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.

For more information on U.S.-China trade, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

For more information, see CRS Insight IN10919, *The G-7 Summit in Charlevoix, Canada: Changing U.S. Leadership in Global Forums*, by Rebecca M. Nelson.
Appendix A. Amendments to and Past Uses of Section 232 (19 U.S.C. §1862)

Concern over national security, trade, and domestic industry was first raised by the Trade Agreements Extension Act of 1954 (P.L. 83-464 §2). The 1954 act prohibited the President from decreasing duties on any article if the President determined that such a reduction might threaten domestic production needed for national defense. In 1955, the provision was amended to also allow the President to increase trade restrictions, in cases where national security may be threatened.

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. 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.

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. The bill was signed into law on April 2, 1980, the same day that President Carter proclaimed a license fee on crude oil and gasoline pursuant to Section 232 in Proclamation 4744.

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

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136 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.)
138 The Trade Act of 1974 (P.L. 93-618, §127(d)) changed the responsibility to advise the President from the Director of Office of Emergency Preparedness to the Secretary of the Treasury with requirements to consult with the Secretaries of Defense, Commerce, and other appropriate departments and agencies. The 1974 Act also placed a one-year time limit on the investigation. The Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, §402) changed the advisory responsibility from the Secretary of the Treasury to the Secretary of Commerce, reduced the investigation timeline from one year to 270 days and created the 15-day implementation period for the President to act. 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.
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.\footnote{H.J.Res 531.} 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.\footnote{Indep. Gasoline Marketers Council, Inc. v. Duncan, 492 F. Supp. 614 (D.D.C. 1980).} 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.\footnote{H.R. 7428 (P.L. 96-264).}

## Appendix B. Section 232 Investigations

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

<table>
<thead>
<tr>
<th>Subject of Investigation</th>
<th>Year Initiated</th>
<th>Initiator</th>
<th>Treasury or Commerce Determination</th>
<th>Presidential Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Manganese and chromium ferroalloys</td>
<td>1963</td>
<td>Manufacturing Chemists Association, Inc.</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Tungsten mill products</td>
<td>1964</td>
<td>General Electric Company (Co.)</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Antifriction bearings</td>
<td>1964</td>
<td>Anti-Friction Bearing Manufacturers Association</td>
<td>Terminated at request of petitioner</td>
<td>-</td>
</tr>
<tr>
<td>Watches, watch movements and parts</td>
<td>1965</td>
<td>Presidential Request</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Manganese, silicon and chromium ferroalloys and refined metals</td>
<td>1968</td>
<td>Committee of Producers of Ferroalloys and Related Products</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Miniature and instrument precision ball bearings</td>
<td>1969</td>
<td>Anti-Friction Bearing Manufacturers Association</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Extra high voltage power circuit breakers, transformers, and reactors</td>
<td>1972</td>
<td>General Electric Co.</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Petroleum</td>
<td>1973</td>
<td>Chairman of the Oil Policy Committee</td>
<td>Positive</td>
<td>Transitioned away from existing quota system to a license fee (Proclamation 4210, 38 FR 9645)</td>
</tr>
<tr>
<td>Petroleum</td>
<td>1975</td>
<td>Secretary of the Treasury</td>
<td>Positive</td>
<td>Added supplemental fee to the license fee (Proclamation 4341); fee was later reduced to zero (Proclamation 4655)</td>
</tr>
<tr>
<td>Iron and steel nuts, bolts, large screws</td>
<td>1978</td>
<td>Presidential Directive</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Petroleum</td>
<td>1978</td>
<td>Secretary of the Treasury</td>
<td>Positive</td>
<td>Conservation fee added, but found to be illegal and blocked by District Court in 492 F. Supp. 614</td>
</tr>
<tr>
<td>Subject of Investigation</td>
<td>Year Initiated</td>
<td>Initiator</td>
<td>Treasury or Commerce Determination</td>
<td>Presidential Action</td>
</tr>
<tr>
<td>-------------------------------------</td>
<td>----------------</td>
<td>------------------------------------------</td>
<td>------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Petroleum from Iran</td>
<td>1979</td>
<td>Secretary of the Treasury</td>
<td>Positive</td>
<td>Embargo imposed on petroleum from Iran on Nov. 12, 1979 (Proclamation 4702)</td>
</tr>
<tr>
<td>Glass-lined chemical processing equipment</td>
<td>1981</td>
<td>Ceramic Coating Co.</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Manganese, silicon and chromium ferroalloys and related metals</td>
<td>1981</td>
<td>Ferroalloys Association</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Iron and steel nuts, bolts, large screws</td>
<td>1982</td>
<td>Secretary of Defense</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Petroleum from Libya</td>
<td>1982</td>
<td>Presidential Request</td>
<td>Positive</td>
<td>Embargo imposed on petroleum from Libya on Mar. 10, 1982 (Proclamation 4907)</td>
</tr>
<tr>
<td>Metal-cutting and Metal Forming Machine Tools</td>
<td>1983</td>
<td>National Machine Tool Builders' Association</td>
<td>Positive</td>
<td>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.¹</td>
</tr>
<tr>
<td>Antifriction bearings</td>
<td>1987</td>
<td>Anti-Friction Bearing Manufacturers Association</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Petroleum</td>
<td>1987</td>
<td>National Energy Security Committee (an industry group)</td>
<td>Positive</td>
<td>No action taken²</td>
</tr>
<tr>
<td>Plastic injection molding machinery</td>
<td>1988</td>
<td>Society of the Plastic Industry, Inc.</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Uranium</td>
<td>1989</td>
<td>Secretary of Energy</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Gears and gearing products</td>
<td>1991</td>
<td>American Gear Manufacturers Association</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Subject of Investigation</td>
<td>Year Initiated</td>
<td>Initiator</td>
<td>Treasury or Commerce Determination</td>
<td>Presidential Action</td>
</tr>
<tr>
<td>------------------------------------------</td>
<td>----------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-------------------------------------</td>
<td>---------------------</td>
</tr>
<tr>
<td>Ceramic Semiconductor Packaging</td>
<td>1992</td>
<td>Coors Electronic Package Co. and Ceramic Process Systems Corporation</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Crude Oil and Petroleum Products</td>
<td>1994</td>
<td>Independent Petroleum Association of America</td>
<td>Positive</td>
<td>No action taken(^b)</td>
</tr>
<tr>
<td>Crude Oil</td>
<td>1999</td>
<td>Secretary of Commerce</td>
<td>Positive</td>
<td>No action taken(^b)</td>
</tr>
<tr>
<td>Iron ore and finished steel</td>
<td>2001</td>
<td>Representatives James Oberstar and Bart Stupak</td>
<td>Negative</td>
<td>-</td>
</tr>
<tr>
<td>Steel</td>
<td>2017</td>
<td>Secretary of Commerce</td>
<td>Positive</td>
<td>Imposed tariffs of 25% on steel imports, from all countries, with an initial exception for Canada and Mexico, with other potential future exceptions(^c)</td>
</tr>
<tr>
<td>Aluminum</td>
<td>2017</td>
<td>Secretary of Commerce</td>
<td>Positive</td>
<td>Imposed tariffs of 10% on aluminum imports, from all countries, with an initial exception for Canada and Mexico, with other potential future exceptions(^d)</td>
</tr>
<tr>
<td>Automobiles, including SUVs, vans and</td>
<td>2018</td>
<td>Secretary of Commerce</td>
<td>In Process</td>
<td></td>
</tr>
<tr>
<td>light trucks, and automotive parts</td>
<td></td>
<td>U.S. uranium mining companies (UR-Energy and Energy Fuels)</td>
<td>In Process</td>
<td></td>
</tr>
</tbody>
</table>


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


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

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

<table>
<thead>
<tr>
<th>Steel</th>
<th></th>
<th>Aluminum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trading Partner</td>
<td>Import Value (million U.S. $s)</td>
<td>Import Share</td>
</tr>
<tr>
<td>Pepermantly Exempted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>South Korea</td>
<td>2,787</td>
<td>9.6%</td>
</tr>
<tr>
<td>Brazil</td>
<td>2,450</td>
<td>8.4%</td>
</tr>
<tr>
<td>Argentina</td>
<td>222</td>
<td>0.8%</td>
</tr>
<tr>
<td>Australia</td>
<td>211</td>
<td>0.7%</td>
</tr>
<tr>
<td>Total Exempted</td>
<td>5,669</td>
<td>19.5%</td>
</tr>
<tr>
<td>Not Exempted</td>
<td></td>
<td></td>
</tr>
<tr>
<td>European Union</td>
<td>5,993</td>
<td>20.6%</td>
</tr>
<tr>
<td>Canada</td>
<td>5,187</td>
<td>17.9%</td>
</tr>
<tr>
<td>Mexico</td>
<td>2,494</td>
<td>8.6%</td>
</tr>
<tr>
<td>Japan</td>
<td>1,659</td>
<td>5.7%</td>
</tr>
<tr>
<td>Russia</td>
<td>1,431</td>
<td>4.9%</td>
</tr>
<tr>
<td>Taiwan</td>
<td>1,264</td>
<td>4.4%</td>
</tr>
<tr>
<td>Turkey</td>
<td>1,192</td>
<td>4.1%</td>
</tr>
<tr>
<td>China</td>
<td>1,009</td>
<td>3.5%</td>
</tr>
<tr>
<td>India</td>
<td>761</td>
<td>2.6%</td>
</tr>
<tr>
<td>Vietnam</td>
<td>532</td>
<td>1.8%</td>
</tr>
<tr>
<td>Thailand</td>
<td>355</td>
<td>1.2%</td>
</tr>
<tr>
<td>South Africa</td>
<td>279</td>
<td>1.0%</td>
</tr>
<tr>
<td>U.A.E.</td>
<td>218</td>
<td>0.8%</td>
</tr>
<tr>
<td>South Korea</td>
<td>112</td>
<td>0.6%</td>
</tr>
</tbody>
</table>

*Total Nonexempted includes additional countries not listed.

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

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