

Section 232 of the Trade Expansion Act of 1962

Background

President Biden is reviewing the existing Section 232 tariffs imposed by President Trump and has raised the possibility of new investigations. Section 232 allows the President to impose import restrictions based on an affirmative investigation determination by the Department of Commerce (Commerce) that certain imports threaten to impair the national security. After conducting eight Section 232 investigations, President Trump acted five times, twice imposing tariffs, declining to act on a sixth finding; another investigation found no threat, and one was terminated. Recent actions under Section 232 have generated debate in Congress and at the multilateral level in the World Trade Organization (WTO). Some in Congress favor legislative options to amend the congressional delegation of authority.

Section 232 Process

Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. §1862, as amended) allows any department, agency head, or any “interested party” to request that Commerce investigate to ascertain the effect of specific imports on U.S. national security. Commerce may self-initiate an investigation.

Investigation. Once a Section 232 investigation is requested in writing, Commerce must “immediately initiate an appropriate investigation to determine the effects on the national security” of the subject imports. After consulting with the Secretary of Defense, other “appropriate officers of the United States,” and the public, if appropriate, Commerce has 270 days from the initiation date to prepare a report advising the President on whether the targeted product is being imported “in certain quantities or under such circumstances” to impair U.S. national security, and to provide recommendations based on the findings.

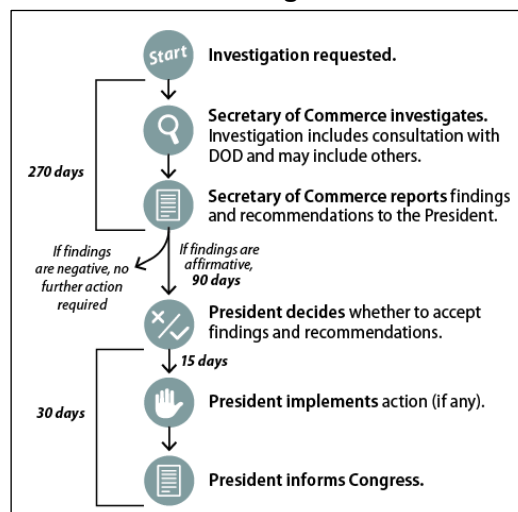
The Bureau of Industry and Security (BIS) at Commerce conducts the investigation (15 CFR Section 705). In terms of national security, Commerce considers: (1) existing domestic production of the product; (2) future capacity needs; (3) manpower, raw materials, production equipment, facilities, and other supplies needed to meet projected national defense requirements; (4) growth requirements, including the investment, exploration, and development to meet them; and (5) any other relevant factors.

On imports, Commerce must consider: (1) the impact of foreign competition on the domestic industry deemed essential for national security; (2) the effects that the “displacement of domestic products” cause, including substantial unemployment, decreases in public revenue, loss of investment, special skills, or production capacity; and (3) any other relevant factors that are causing, or will cause, a weakening in the national economy. Commerce may request public comments or hold hearings, if appropriate.

An Executive Summary of the final report (excluding any confidential or classified material) must be published in the *Federal Register*.

Presidential Action and Notification. If Commerce finds in the negative, Commerce informs the President and no further action is required. If Commerce determines in the affirmative, the President, upon receipt of the report, has 90 days to: (1) determine whether he/she concurs with its findings; and (2) if so, determine the nature and duration of the action to be taken to adjust the subject imports. The President may decide to impose tariffs or quotas to offset the adverse effect, without any limits on their duration, or take other action. The President may exclude specific products or countries. After a determination, the President must implement the action within 15 days, and submit a written statement to Congress explaining the actions or inaction within 30 days (see **Figure 1**). The President must also publish his determination in the *Federal Register*.

Figure 1. Section 232 Investigation Process



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

Prior Section 232 Actions

Prior to the Trump Administration, Commerce initiated 26 Section 232 national security investigations, beginning in 1963. Of the 26 cases, Commerce made negative determinations 62% of the time. Prior to 2018, when Commerce made positive determinations, the President took action six times (**Figure 2**). Five positive findings addressed petroleum products or crude oil, resulting in actions that included two embargos (on crude oil from Iran in 1979 and on crude oil from Libya in 1982). Aside from the Trump Administration, a president last imposed tariffs or other trade restrictions under Section 232 in 1986.

Trump Administration and Section 232

The Trump Administration opened eight Section 232 investigations. Commerce initiated two investigations, into

steel and aluminum imports, in April 2017. In each, Commerce analyzed current and future requirements for national defense and 16 specific critical infrastructure sectors. The agency determined that the quantities and circumstances of the imports threatened to impair U.S. national security and recommended presidential action.

President Trump concurred with Commerce's findings, and in March 2018, applied tariffs of 25% and 10% on certain imports of steel and aluminum, respectively, covering most U.S. trading partners. Permanent exemptions were granted to Brazil and South Korea for steel and to Argentina for steel and aluminum in exchange for quotas. Australia was exempted from both tariffs. In May 2019, President Trump lifted the metal tariffs on imports from Canada and Mexico as part of efforts toward congressional ratification of the new U.S.-Mexico-Canada Agreement (USMCA), replacing the tariffs with a joint monitoring and consultation system. In January 2020, President Trump expanded the scope of the tariffs to include certain derivative goods.

Commerce initiated a third investigation into the imports of *automobiles and certain automotive parts* in May 2018, and concluded that the imports posed a national security threat. The Trump Administration highlighted the possibility of imposing Section 232 auto tariffs on top suppliers of U.S. auto imports, which some analysts argue influenced the outcome of U.S. trade negotiations, including with Japan. Ultimately, the Administration did not take further action.

In July 2019, President Trump did not concur with the Commerce Section 232 finding that imports of *uranium ore* and related products threatened to impair national security, but did establish a working group to address the issue.

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

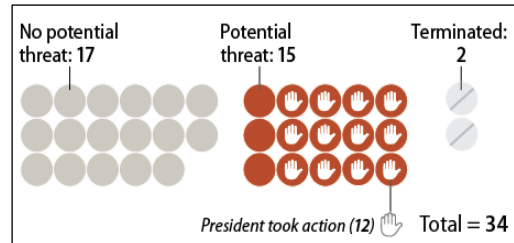
In spring 2020, Commerce initiated three investigations into imports used in national defense applications and certain critical infrastructure sectors. Commerce found a threat to impair national security from imports of *grain-oriented electrical steel for transformers* for which Mexico agreed to set up a monitoring system, avoiding potential tariffs. The petitioner for *mobile crane* imports withdrew its request and Commerce terminated the investigation. The probe into *vanadium* imports found no national security threat.

How Does Section 232 Differ from Other Trade Enforcement Tools?

Section 232 is one of several U.S. policy tools addressing imports. Other tools include Section 201 of the Trade Act of 1974 (19 U.S.C. §2252 et seq.) to potentially impose temporary safeguard measures for import surges of fairly-traded goods, based on U.S. International Trade Commission (ITC) investigations of whether the imports are causing or threaten to cause serious injury. Rather than focusing on national security, however, Section 201 investigations aim to help the U.S. industry return to health and any actions taken are temporary. Similar to Section 232, presidential action is required under Section 201 before tariffs can be imposed.

Other import policy tools include antidumping (AD) and countervailing duty (CVD) actions, provided when a domestic industry is materially injured, or threatened with material injury, either by sales found to be at less than fair value in the U.S. market (AD) or of products found to be subsidized by a foreign government or other public entities (CVD). Presidential action is not required in these investigations; it is automatic, based on affirmative findings jointly by the ITC and Commerce.

Figure 2. Section 232 Investigations 1963-2021



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

WTO Implications

Under the World Trade Organization (WTO) agreements, Article XXI of the General Agreement on Tariffs and Trade (GATT) allows WTO members to take measures in order to protect “essential security interests.” Several WTO trading partners, including China, the European Union (EU), and India, have challenged the current U.S. tariffs by alleging that they violate GATT Article I, which obligates WTO members to treat one country’s goods no less favorably than another member’s; and GATT Article II, which generally prohibits members from placing tariffs on goods above the upper limits to which they agreed. Some WTO members have also asserted that the U.S. actions violate the WTO Agreement on Safeguards and have imposed counter tariffs on U.S. imports without WTO authorization, which also may raise questions about whether those members are upholding similar WTO commitments.

Issues for Congress

The Biden Administration continues to retain the Section 232 tariffs on steel and aluminum imports. Its supply chain review (EO 14017) recommended potential new Section 232 investigations for certain imports to address potential critical supply chain vulnerabilities. The recent Section 232 investigations and actions raise a number of issues for Congress, including:

- Should Congress consider amending current delegated authorities under Section 232, such as by requiring an economic impact study, congressional consultation or approval, or by specifying further guidance?
- Have the Section 232 tariffs achieved the stated goals?
- How should Congress work with the Administration to review the existing Section 232 tariffs and actions?
- How are U.S. unilateral increased tariff actions impacting relationships with U.S. allies and the multilateral trading system?

Rachel F. Fefer, Analyst in International Trade and Finance

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