

KIRKLAND ALERT

March 27, 2018

The Trump Administration Imposes Steel and Aluminum Import Tariffs, Linking International Trade With National Security

On March 23, 2018, tariffs of 25 percent on imported steel and 10 percent on imported aluminum went into effect for all countries not issued an exemption.¹ Issued under Presidential Proclamations 9704 and 9705, the tariff orders are less far-reaching than originally announced. The administration has granted exemptions for the EU, Canada, Mexico, Brazil, Australia, Argentina and South Korea, and the tariffs remain subject to change. President Trump will decide by May 1, 2018, whether to continue to exempt these countries from the tariffs.²

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The new tariffs are another front in a broader administration effort to more closely link certain international trade issues with broader U.S. national security concerns. Importantly, the president tied his decision to suspend the tariff orders for certain countries to the satisfactory discussion of alternative means to address the threatened impairment to U.S. national security, and has excluded Canada and Mexico from the orders pending North American Free Trade Agreement (“NAFTA”) renegotiations.³ In addition, the tariffs include a mechanism whereby U.S. parties can apply for exclusion of specific products based on demand that is unmet by domestic production or on certain national security considerations.⁴ The tariffs represent one of the Trump administration's most assertive trade actions to date.

The View from Washington

The new tariffs were announced on March 1, 2018, the day after the release of President Trump's *2018 Trade Policy Agenda and Annual Report* (“2018 Trade Policy Agenda”), which emphasizes the connection between domestic economic prosperity and U.S. national security and influence abroad.⁵ The 2018 Trade Policy Agenda states that America's trade policy “should be consistent with, and supportive of, our national security strategy.”⁶ President Trump has made it clear that this strategy includes “addressing unfair trade and the threat it poses to our national security.”⁷ Since taking office, the president has also approved safeguard tariffs on imports of large residential washing machines and solar cells, launched an investigation into allegations of Chinese forced technology transfers and other unfair practices, and conducted antidumping and countervailing duty investigations.⁸

While the tariffs on steel and aluminum did not specifically target China, the Secretary of Commerce specifically noted Chinese dominance over the steel and aluminum marketplace when issuing the Section 232 investigation reports. In addi-

tion to trade enforcement actions, China has also been the focus of [increased scrutiny](#) in other areas, including anti-corruption, economic sanctions and foreign investment clearance under the Committee on Foreign Investment in the United States (“CFIUS”).

The tariff development has received mixed reactions. Sweden’s Electrolux announced that it would be delaying a \$250 million investment in Tennessee after concerns about the tariffs’ impact on the market and the competitiveness of their U.S. operations. Certain U.S. manufacturers criticized the tariffs, raising concerns over anticipated heightened costs associated with producing consumer goods, while companies that produce steel and aluminum claim that the tariffs will allow them to reopen mills, expand operations, attract new workers, and maintain steel- and aluminum-making skills.⁹

Some foreign partner countries, including certain treaty allies, raised the possibility of retaliatory measures, such as placing restrictions on imports of American products, that may have made U.S. access to international markets more difficult. However, allies which received exemptions are no longer expected to take such measures, at least while the suspensions remain, and some, such as the EU and Japan, have agreed to work with the U.S. to address the threat posed by global overcapacity and unfair competition. South Korea reportedly has agreed to a quota on exports of targeted products to the U.S. The Trump administration may view its allies’ acknowledgement of these threats as validating the president’s strategy, emboldening future actions to restrict imports into the U.S.¹⁰

At this time of uncertainty, companies would be well-advised to conduct a thorough value-chain vulnerability analysis of tariff risks.

Regulatory Landscape

The tariffs on steel and aluminum were imposed after a U.S. Department of Commerce (“Commerce”) [investigation](#) under Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. §1862, concluded that the quantities and circumstances of steel and aluminum imports reviewed “threaten to impair the national security” of the U.S.¹¹ The steel and aluminum tariffs are the first import measures imposed under the statute since 1983. The tariffs will cover all steel products under HTS Codes 7206.10 through 7216.50, 7216.99-7301.10, 7302.10, 7302.40-7306.90 and unwrought aluminum under HTS Code 7601, wrought aluminum under 7604-7609, and castings and forgings under 7616.99.51.

There is no specific definition for “national security” under Section 232.¹² Instead, the statute contains a non-exhaustive list of illustrative factors, such as domestic production needed for national defense requirements, providing the government considerable leeway in its determination.¹³ The president has the authority to restrict *all* imports for an *unlimited* time if, based on Commerce’s investigation findings, the president finds such action necessary to protect the nation’s national security.¹⁴

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The Section 232 tariffs are the most recent in a string of trade-related investigations and enforcement measures, including many that are currently pending with government agencies. Given the current trend, companies should expect continued rigorous use of traditional trade tools (e.g., antidumping and countervailing duty investigations), as well as previously rarely used authorities (e.g., Section 232; Section 201), as the government continues to combat what it perceives as unfair trade practices and national security threats.

Key Takeaways:

- Trade enforcement measures can have a cascading effect throughout a commercial value chain, impacting a wide range of stakeholders. This effect is especially significant when measures are imposed on ubiquitous products, such as steel and aluminum, which are used for a variety of purposes in numerous end products. Investors and companies should consider such costs as a longer-term consequence for their businesses and sponsors.
- Continued strain on the U.S. relationship with China and other countries risks retaliatory measures, including restrictions on imports of U.S. items, which could make entrance into foreign markets more difficult and costly for U.S. businesses.
- Business with China carries heightened risk generally. Companies contemplating business with a China nexus should factor in more extensive due diligence and heightened risks associated with any transaction.
- Additional trade enforcement measures are likely in the future. There has been a trend towards increased use of traditional and non-traditional trade measures, which is likely to continue where the administration views such measures as resulting in positive consequences.

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- ¹ Presidential Proclamations on Adjusting Imports of Steel and Aluminum into the United States, 83 FR 11619 and 83 FR 11625 (March 15, 2018).
- ² Presidential Proclamations on Adjusting Imports of Steel and Aluminum into the United States (March 22, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/president-trump-approves-section-232-tariff-modifications>.
- ³ *Id.*
- ⁴ Requirements for Submissions Requesting Exclusions From the Remedies Instituted in Presidential Proclamations Adjusting Imports of Steel Into the United States and Adjusting Imports of Aluminum Into the United States; and the Filing of Objections to Submitted Exclusion Requests for Steel and Aluminum, Bureau of Industry and Security, 83 FR 12106 (Mar. 19, 2018).
- ⁵ *See* Office of the U.S. Trade Representative, 2018 Trade Policy and 2017 Annual Report (Feb. 28, 2018), <https://ustr.gov/about-us/policy-offices/press-office/reports-and-publications/2018/2018-trade-policy-agenda-and-2017>.
- ⁶ *Id.*
- ⁷ *See e.g.*, Fact Sheet, President Donald J. Trump will Protect American National Security from the Effects of Unfair Trade Practices (Mar. 8, 2018), <https://www.whitehouse.gov/briefings-statements/president-donald-j-trump-will-protect-american-national-security-effects-unfair-trade-practices> (describing national security threat posed by unfair trade practices).
- ⁸ *See id.*
- ⁹ News Clips, Commerce Secretary Wilbur Ross: “Why We Imposed the Metal Tariffs,” (Mar. 9, 2018), *available at* <https://www.whitehouse.gov/briefings-statements/commerce-secretary-wilbur-ross-imposed-metal-tariffs/>; *see also* AFL-CIO, “Tariffs are Good for Workers,” (Mar. 6, 2018), <https://www.usw.org/blog/2018/tariffs-are-good-for-workers>; Whitney Lloyd, *US Steel Bringing Back 500 Jobs in Illinois after President Trump’s Tariff Announcement*, ABC News (Mar. 9, 2018, 4:57 PM), <http://abcnews.go.com/US/us-steel-bringing-back-500-jobs-illinois-president/story?id=53635359>.
- ¹⁰ *See* Emre Peker, “EU, Japan Press for Waivers on Trump’s Tariffs as U.S. Weighs Criteria,” *The Wall Street Journal* (Mar. 10, 2018 5:30 PM), <https://www.wsj.com/articles/eu-japan-seek-exemption-from-u-s-trade-tariffs-1520701390>; Press Release, Office of the U.S. Trade Representative, Joint Statement by the United States, European Union and Japan at MC11 (December 2017), *available at* <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/december/joint-statement-united-states>.
- ¹¹ *See* Press Release, U.S. Department of Commerce, Secretary Ross Releases Steel and Aluminum 232 Reports in Coordination with White House (Feb. 16, 2018), *available at* <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.
- ¹² *See* 19 U.S.C. §1862(d).
- ¹³ *Id.*
- ¹⁴ 19 U.S.C. § 1862(c)(1)(A).

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