

# KIRKLAND ALERT

April 25, 2017

## Trump Administration Launches Rare Probe of the National Security Impact of Steel Imports

On April 20, 2017, the Trump Administration announced the initiation of an investigation under Section 232 of the Trade Expansion Act of 1962<sup>1</sup> to assess the impact of steel imports on U.S. national security. This “Section 232” investigation reflects another step towards implementation of the Trump Administration’s assertive “America First” [international trade agenda](#), and provides further indication of the president’s intent to use all available mechanisms to [promote robust trade enforcement](#).

We provide below an overview of the policy rationale and scope of the new investigation, a summary of the investigation’s next steps, and key takeaways for industry and stakeholders.

### *Policy Rationale & Scope of the Investigation*

The [presidential memorandum](#) announcing the investigation characterizes the U.S. steel industry as a sector in crisis, plagued by excess capacity that largely originates from “foreign government subsidies and other unfair practices.”<sup>2</sup> Steel, the memorandum indicates, is a “core industry” and a “critical element” of the U.S. manufacturing and defense industrial base. However, according to the memorandum, existing trade enforcement tools, including antidumping and countervailing duty (“AD/CVD”) orders currently imposed on steel imports, have not been sufficient to mitigate the detrimental impacts of “unfairly traded imports” on U.S. steel producers.<sup>3</sup> Without executive action, the current circumstances may create a national security risk for the United States “by undermining the ability of American steel producers to continue investment and research and development, and by reducing or eliminating the jobs needed to maintain a pool of skilled workers essential for the continued development of advanced steel manufacturing.”<sup>4</sup>

The broad investigation will examine, among other factors, “the domestic production needed for projected national defense requirements,” the “importation of goods in terms of their quantities and use,” and “the close relation of national economic welfare to U.S. national security.”<sup>5</sup> The investigation will be led by the Department of Commerce, with input from the Department of Defense.

Of note, Section 232 investigations are relatively rare. The U.S. government has initiated only two such investigations since the U.S. joined the World Trade Organization (“WTO”) in 1995. In each case, the Department of Commerce did not recommend any response by the president.

**This investigation reflects another step towards implementation of the Trump administration’s “America First” international trade agenda.**

### *Next Steps*

- Within **270 days**, the Department of Commerce must issue a report to the president summarizing its findings from the investigation and recommended actions.
  - In announcing the investigation, President Trump suggested that the duration would likely be shorter: “*we’ll be back over a period of the next 30 to 50 days, [ . . . ] and maybe sooner than that.*”<sup>6</sup> Secretary of Commerce Wilbur Ross has confirmed that the investigation will proceed on a compressed timeline, stating that it will be “*expedited.*”<sup>7</sup>
- Following the report from Commerce, the President has **90 days** to determine how to respond to any findings that imports threaten national security.
  - The President is empowered to take a variety of actions in response to such findings, including setting tariffs, quotas, tariff rate quotas, or other exclusion orders.
  - There is no limit to potential tariffs that may be imposed.

### *Key Takeaways*

- The Trump administration’s emphasis on trade enforcement and increased willingness to seek flexibility in tariffs will require companies reliant on U.S. imports to seek alternate sources of goods.
  - Operating companies may need to budget for changes in suppliers and vendors, and investors should closely examine the import profiles of target companies.
- While the investigation does not target a particular country, the impact is likely to be felt most strongly with respect to steel from China, especially steel that has been further manufactured into value-added products in third countries. Indeed, the plurality (28) of the 152 steel-related AD/CVD orders in place have been imposed on Chinese steel products.
  - Sourcing from China or exporters in third countries that rely on Chinese steel in particular will continue to entail heightened risk of elevated duties and U.S. import compliance concerns, in addition to the existing Foreign Corrupt Practices (“FCPA”) and other international risks that often accompany business in China.
- While the current investigation relates to steel imports, the presidential memorandum notes that steel is one of several “core industries,” including aluminum, vehicles, aircraft, shipbuilding and semiconductors.
  - Operating companies and sponsors doing business with a nexus to these sectors should similarly consider how the Trump administration’s international trade priorities may affect their bottom line.

**“Steel is critical to both our economy and our military. This is not an area where we can afford to become dependent on foreign countries.”**

**— President Trump**

\* \* \*

The United States, the EU and other countries scrutinize or regulate international business activities to advance priority national security, foreign policy and other objectives. If not addressed effectively, such governmental scrutiny or regulation can adversely impact business strategy and investment decisions, lead to significant individual and corporate civil and criminal penalties, and may even result in imprisonment for responsible persons.

Anchored in Washington, D.C., Kirkland & Ellis's [International Trade and National Security Practice](#), in coordination with the Firm's [global offices](#) and [related practice areas](#), works closely with companies, investors and boards to mitigate and manage the legal and non-market risks associated with operating or investing across national borders.

If this publication was forwarded to you and you would like to receive similar future client alerts directly, please subscribe [here](#).

---

<sup>1</sup> 19 U.S.C. §1862.

<sup>2</sup> The White House, "Presidential Memorandum for the Secretary of Commerce, (Apr. 20, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/20/presidential-memorandum-secretary-commerce>.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> See U.S. Department of Commerce, *Frequently Asked Questions: Section 232 Investigations: The Effect of Steel Imports on the National Security* (Apr. 21, 2017), <https://www.commerce.gov/news/fact-sheets/2017/04/frequently-asked-questions-section-232-investigations-effect-steel-imports>.

<sup>6</sup> The White House, "Remarks by President Trump at Signing of the Memorandum Regarding the Investigation Pursuant to Section 232(B) of the Trade Expansion Act," (Apr. 20, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/20/remarks-president-trump-signing-memorandum-regarding-investigation>.

<sup>7</sup> The White House, "Press Briefing by Secretary of Commerce Wilbur Ross on the Memorandum Regarding the Investigation Pursuant to Section 232 (B) of the Trade Expansion Act," (Apr. 20, 2017), <https://www.whitehouse.gov/the-press-office/2017/04/20/press-briefing-secretary-commerce-wilbur-ross-memorandum-regarding>.

If you have any questions about the matters addressed in this *Kirkland Alert*, please contact the following Kirkland authors or your regular Kirkland contact.

Mario Mancuso, P.C.  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/mmancuso](http://www.kirkland.com/mmancuso)  
+1 202 879 5070

Joanna M. Ritcey-Donohue  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/jritcey-donohue](http://www.kirkland.com/jritcey-donohue)  
+1 202 879 5980

Lucille Hague  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
[www.kirkland.com/lhague](http://www.kirkland.com/lhague)  
+1 202 879 5195

*This communication is distributed with the understanding that the author, publisher and distributor of this communication are not rendering legal, accounting, or other professional advice or opinions on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use. Pursuant to applicable rules of professional conduct, this communication may constitute Attorney Advertising.*

© 2017 KIRKLAND & ELLIS LLP. All rights reserved.

[www.kirkland.com](http://www.kirkland.com)