

US & Multilateral Trade Policy Developments

Japan External Trade Organization

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Contents

US General Trade Policy	1
TPP-11 Countries Move Forward with CPTPP Ratification as United States Reassesses its Options	1
President Trump Extends Section 232 Exemptions for Argentina, Australia, Brazil, Canada, the European Union, and Mexico; Implements Steel Quota Agreement with South Korea.....	10
US Department of Commerce Initiates Section 232 Investigation of Automobiles and Automotive Parts.....	12
U.S. Lawmakers, Trading Partners and Industry Groups React to U.S. Section 232 Investigation of Automobiles & Parts	22
US Department of Commerce Requests Written Comments and Schedules Public Hearing for Section 232 Investigation of Automobiles and Automotive Parts.....	27
White House Issues Statement Regarding Section 301 Investigation of China.....	30
President Trump Signs Proclamations Modifying Section 232 Measures, Allows Exemptions to Expire for Canada, Mexico, and the European Union	32
Petitions and Investigations Highlights	35
US Department of Commerce Issues Affirmative Preliminary Determinations in Anti-Dumping Investigations of PET Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan	35
US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping and Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Italy, Korea, Spain, Turkey, and the United Kingdom	35
US Department of Commerce Issues Affirmative Preliminary Determinations in Anti-Dumping Duty Investigations of Forged Steel Fittings from China, Italy, and Taiwan.....	36
US Department of Commerce Issues Affirmative Preliminary Determination in Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from China	37
US International Trade Commission Issues Affirmative Final Determination in Countervailing Duty Investigation of Stainless Steel Flanges from China	37
US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping Duty Investigations of Tool Chests and Cabinets from China and Vietnam	38
US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping Duty Investigations of Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea and Switzerland.....	38
US Department of Commerce Initiates Anti-Dumping and Countervailing Duty Investigations of Certain Quartz Surface Products from China.....	38
Multilateral Highlights	40
US Trading Partners Respond to Section 232 Tariff Actions	40

US General Trade Policy

TPP-11 Countries Move Forward with CPTPP Ratification as United States Reassesses its Options

As the United States reassesses the Trans-Pacific Partnership Agreement (TPP), over a year after President Donald Trump withdrew, the eleven countries still party to the successor agreement, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), push ahead with ratification. Once a sufficient number of CPTPP parties have ratified the agreement, it will enter into force – as soon as late-2018. Afterwards, other parties, including the United States, can accede according to the agreement's procedures for new members. Negotiating favorable reentry into the CPTPP will not be easy as President Trump and some of his advisors seem to believe, and could face numerous challenges on the political, legal and procedural fronts.

Given these developments, this report summarizes the status of the CPTPP parties' ratification efforts, the potential timeline for the agreement's entry into force, and the potential for new members, including the United States, to join the CPTPP after entry into force.

US Vacillation

On April 12, 2018, President Trump during a meeting with farm-state governors and lawmakers surprised his audience and asked his economic advisors, United States Trade Representative (USTR) Robert Lighthizer and newly appointed National Economic Council Director Larry Kudlow, to explore rejoining the TPP and to assess "whether or not a better deal could be negotiated." The President's comments engendered both cautious optimism and doubt among US stakeholders and the eleven remaining CPTPP countries.

On April 13, however, President Trump again reversed course on TPP and reiterated his preference for bilateral trade agreements, taking aim at Japan just days before scheduled talks with Japanese Prime Minister Shinzo Abe. President Trump at that time stated that he would only consider rejoining TPP "if the deal were substantially better than the deal offered to President Obama." Japan appears to be warming to the idea of some form of bilateral trade arrangement for "free, fair and reciprocal" trade with the United States, but many Japanese government officials, not to mention several Republican lawmakers, the US agriculture sector, multinational companies, and the original eleven TPP member countries, are skeptical of a bilateral trade agreement and instead hope that the United States may change course yet again and ultimately rejoin the TPP (CPTPP) at some point in future.

TPP vs. CPTPP

Eleven of the original 12 TPP signatories (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) signed the CPTPP on March 8, 2018 after more than a year of re-negotiation following the United States' withdrawal. Although technically a separate treaty, the CPTPP incorporates nearly all of the provisions of the TPP as signed in 2016 by the original 12 parties (including the United States), except for a handful of provisions that the remaining member countries agreed by consensus to suspend.¹ Most of the suspended provisions had been inserted into the original TPP text at the demand of US negotiators to safeguard the interests of various domestic stakeholders, covering such issues as market exclusivity rules for biologic drugs, strict copyright enforcement priorities, and investor state dispute settlement (see **Annex I** for details of the suspended provisions). The CPTPP text also incorporates a few technical and procedural provisions concerning such issues as accession, entry into force, withdrawal, and authentic texts (see **Annex II** for details of these provisions).

¹ The Parties agreed to suspend 20 provisions, mostly relating to the investment and intellectual property chapters of the original TPP as follows: (i) express shipments (Article 5.7.1(f)); (ii) Investment Agreement and investment authorization including investor-to-state dispute settlement (ISDS) (Article 9.1), and provisions concerning submission of claim to arbitration (Article 9.19.1, 9.19.2, 9.19.3) and selection of arbitrators (9.22.5); (iii) express delivery services (Annex 10-B); (iv) minimum standard of treatment in the Investment Agreement (Article 11.2); (v) resolution of telecommunications disputes (Article 13.21.1(d)); (vi) commitments relating to labor rights in conditions for participation (Article 15.8.5); (vii) further negotiations on the Investment Agreement (Article 15.24.2); (viii) national treatment (Article 18.8, footnote 4); (ix) patentable subject matter (Article 18.37.2 and 18.37.4); (x) patent term adjustment for unreasonable granting authority delays (Article 18.46); (xi) patent term adjustment for unreasonable curtailment (Article 18.48); (xii) protection of undisclosed test or other data (Article 18.50); (xiii) biologics (Article 18.51); (xiv) term of protection for copyright and related rights (Article 18.63); (xv) technological protection measures (TPMs) (Article 18.68); (xvi) rights management information (RMI) (Article 18.69); (xvii) protection of encrypted program-carrying satellite and cable signals (Article 18.79); (xviii) legal remedies and safe harbors (Article 18.82, Annexes 18-E and 18-F); (xix) conservation and trade (Article 20.17.5); and (xx) transparency and procedural fairness for pharmaceutical products and medical devices (Annex 26A).

Besides the suspended provisions, the CPTPP preserves all of the original and substantive TPP commitments in market access for goods, services, investment, state-owned enterprises, government procurement, and business mobility. In other words, all of the existing annexes from the TPP Agreement remain unchanged, and all tariff reduction and/or elimination schedules, services and investment liberalizations, as well as market access for government procured works will take place as scheduled in the original commitments, with a majority taking effect from day one from entry into force of the agreement. There are also several bilateral side instruments (or side letters), which serve to complement and clarify the position among or between parties on specific issues of importance.

The final text of the CPTPP Agreement has been reduced from 622 pages to 584 pages with the removal of the suspended provisions, which pursuant to Article 2 of the CPTPP will remain suspended until the eleven signatories decide otherwise by consensus. The rationale for setting these provisions aside for later consideration and debate, as opposed to completely removing them from the legal text, was a negotiating tactic led by Japan and Australia aimed at leaving the door open for the eventual return to the agreement by the United States. Absent the United States signaling interest to rejoin and thus rekindling the incentive of preferential access to US markets, it is unlikely that the eleven countries can or would indeed want to reach consensus on “unsuspending” any of the contentious provisions.

CPTPP Ratification and Implementation

The CPTPP will enter into force 60 days after the date on which at least six or at least 50 percent of the number of signatories to the agreement, whichever is smaller, have completed their domestic ratification procedures to implement the agreement and have notified the official repository country for CPTPP (New Zealand). Entry into force could occur as soon as the **end of 2018 or early 2019**, as several countries have already commenced (or even finalized) ratification procedures:

- **Mexico.** In a surprise move on April 24, the Mexican Senate voted overwhelmingly by 73 to 24 to ratify the CPTPP, making Mexico the first of the eleven signatories to do so. The Senate rushed to ratify the agreement given the high probability that leftist presidential candidate Lopez Obrador will win the upcoming July elections.
- **Japan.** The Cabinet of Prime Minister Shinzo Abe approved a set of ratification bills on March 27, paving the way for Japanese lawmakers to present the bills during the current Diet session, which runs through June 20.
- **Australia.** The Australian government tabled in Parliament on March 26 the legal text of the CPTPP, the 21 side-letters signed between Australia and other CPTPP members, and the National Interest Analysis [2018], which details the regulatory impact that the agreement may have on the Australian economy. The Joint Standing Committee on Treaties (JSCOT) considered the CPTPP and side letters during a public hearing on the morning of May 7. The Senate Foreign Affairs, Defense and Trade References Committee will also consider the agreement and is accepting submissions until May 31 after which the Committee will hold hearings and announce its position on the CPTPP in mid-September 2018. If in favor, there will be an exchange of notes, possibly following Federal Executive Council Approval, prior to ratification.
- **Peru.** According to Peruvian Trade and Tourism Minister Rodgers Valencia, the legal text of the CPTPP has been sent to the Ministry of Foreign Affairs (MFA) for review. The MFA will decide if the agreement can be approved by executive order or needs to go through the congressional process. Either way, Peru’s new President Martin Vizcarra, who took office in late March 2018, has signaled his support for the agreement.

Meanwhile, the governments of **Brunei Darussalam, Chile, New Zealand, and Singapore** are widely expected to finalize their ratification procedures within 2018, particularly if Japan is able to ratify the agreement during the current

Diet session. As the largest economy of the CPTPP countries, the speed with which Japan is able to ratify the agreement will directly influence the actions of other members. Meanwhile, **Malaysia, Vietnam** and **Canada** are not expected to ratify the CPTPP until 2019 or later in light of domestic implementation constraints, as well as unpreparedness (in the cases of Malaysia and Vietnam) and the ongoing NAFTA renegotiations (in the case of Canada). According to informed sources, Japan may host a meeting in June or July 2018 with the chief negotiators of the other CPTPP members to take stock of each country's domestic ratification processes and expected timelines.

CPTPP Accession and Possible Pathways for US Reentry

Other countries besides the United States have already indicated interest in joining the CPTPP, including Colombia, Indonesia, Korea, the Philippines, Taiwan, Thailand, and even the United Kingdom. While the precise accession terms and conditions remain unclear, the United States could not commence formal negotiations to “rejoin” the agreement until (1) the CPTPP is officially implemented (likely in late 2018 or early 2019); and (2) all members are comfortable with the terms of US reentry and agree thereto by consensus.² Until then, many domestic, geopolitical and economic factors, such as the outcomes of the November midterm US elections, the denuclearization of North Korea, and a possible trade war with China, could tilt the United States closer to or further away from eventual accession to the agreement.

The speed with which the United States could potentially join the CPTPP, seek to improve the agreement or consider other options would depend on the terms and conditions of its accession – and no option is ideal.

- **Option 1: CPTPP.** If the United States were willing to accede to the agreement “as is” and based on its previous (TPP) market access commitments, accession would likely face little opposition, if any, from the current CPTPP parties. This approach, however, would likely be opposed by US members of Congress, which must approve any signed agreement’s implementing legislation. These members could demand the reinstatement of TPP provisions on, for example, intellectual property, or argue that the revised deal is inconsistent with related US negotiating directives set forth in Trade Promotion Authority (TPA). US business community opposition might also be expected on similar grounds. This option would also likely be politically impossible for President Trump.
- **Option 2: “CPTPP-plus”.** The United States could instead seek to accede based on its previous (TPP) market access commitments, but also request CPTPP parties to unsuspend most or all of the contentious provisions and to reinstate some or all of the United States’ 53 TPP side letters. The US efforts would likely be welcomed by CPTPP parties, but there is no guarantee that the current members would quickly and consensually agree to reactivate the suspended provisions. Instead, new negotiations are likely, thus raising significant domestic political concerns among certain CPTPP parties whose citizens oppose, for example, US intellectual property rights policies or other Trump administration positions (e.g., steel tariffs). There also is no certainty that the US Congress would approve a “new” agreement or not demand additional amendments and concessions from the other eleven members – something the other eleven members would probably not welcome. Finally, it remains uncertain how TPA procedures would apply to the new agreement given that the original TPP text has since been altered. Given the current administration’s political need for some changes that they can claim are “improvements” to the original TPP, such as adding some side letter sweeteners to give President Trump political cover, this option may be the most plausible at least during his presidency.
- **Option 3: TPP.** Finally, the United States might simply try to ratify the original TPP, which (1) remains in limbo; (2) has actually been implemented by a few TPP parties (e.g., New Zealand and Japan); and (3) has already

² The simplified accession clause in the CPTPP contrasts with the more detailed accession terms and conditions in Article 30.4 of the TPP Agreement, providing more flexibility for the CPTPP parties and the prospective member to negotiate specific terms of entry. See *Annex III* for Article 30.4 of the TPP.

satisfied certain TPA procedural requirements. This approach, however, also raises serious questions, most notably whether the TPP parties could achieve the number of ratifications – six of twelve and 85 percent of GDP – needed for the deal to enter into force, and, even if they could, the status of the CPTPP, which would likely be in force. For these reasons, this option seems to be the least likely of the three.

While the above options represent the most plausible pathways for the United States to rejoin the agreement, it is unclear how any of these options – all of which would largely retain the substance of the original agreement – could be reconciled with the Trump administration's insistence on a "substantially better" agreement than the original TPP. The CPTPP signatories also have voiced opposition to any further substantive renegotiation of the agreement.

Conclusion

Despite the aforementioned challenges, the eleven CPTPP countries, as well as the United States itself, would have much to gain – from both an economic and geopolitical standpoint – if the United States came back into the fold. As it stands, the eleven CPTPP countries represent approximately 500 million people and account for more than 13 percent of the global economy with a total GDP of USD 10.2 trillion according to the Australian Department of Foreign Affairs and Trade (DFAT). With the United States back in the agreement, the twelve countries would represent over 800 million people and account for more than 40 percent of the global economy with a total GDP of USD 27.5 trillion. A CPTPP with the United States could also serve as an important counterweight to China's increasing influence in the region, particularly as China along with ASEAN member countries are pushing for swift conclusion of the 16-member Regional Comprehensive Economic Partnership (RCEP). US participation could also encourage other countries to join the CPTPP.

For these and other reasons, the eventual US accession to CPTPP cannot be ruled out. Much depends, however, on US-China relations: should current tensions cool and negotiations on bilateral agreements be initiated, the United States might no longer see the utility of CPTPP; should US-China tensions increase, on the other hand, pressure could build on the United States to re-engage with the CPTPP parties as other options, like unilateral protectionism or bilateral trade agreements, prove unsuccessful.

Nevertheless, there remains no easy way for the United States to accede to the CPTPP, and any such accession may be dictated more by politics – in the United States and elsewhere – than by economic and geopolitical substance.

Annex I

TPP Suspended Provisions

Chapter	Suspended Provision	Effect of the Suspension
Chapter 5: Customs Administration and Trade Facilitation	1. Article 5.7.1(f): Express Shipments (suspend second sentence)	Each Party has agreed not to assess customs duties on express shipments valued at or below a fixed amount as set under its domestic law. There will no longer be an obligation for Parties to review the threshold below which no duties on express shipments are charged.
Chapter 9: Investment	2. Article 1.9.1: Definitions (suspend “investment agreement” and “investment authorization” and associated footnotes) Article 9.19.1: Submission of Claim to Arbitration (amends (a)(i)B and C; (b)(i)B and C (investment authorization or investment agreement), chausette, footnote 3 Article 9.19.2: Submission of Claim to Arbitration Footnote 32 Article 9.19.3: Submission of Claim to Arbitration (delete investment authorization or investment agreement) Article 9.22.5: Selection of Arbitrators 9.25.2: Governing Law Annex 9-L: Investment Agreements	These suspended provisions amend the scope of Investor-State Dispute Settlement (ISDS). Foreign investors can no longer make an ISDS claim for violation of private investment contracts with the government, or investment authorizations. Foreign investors, however, can still make an ISDS claim for a violation of an investment obligation, such as expropriation or the minimum standard of treatment.
Chapter 10: Cross-Border Trade in Services	3. Annex 10-B: Express Delivery (suspend paragraph 5 and 6)	The Parties are no longer obliged to refrain from cross-subsidizing express delivery services with revenues derived from monopoly postal services. Each Party is no longer required to ensure that its postal monopoly does not have monopoly position when supplying express delivery services.
Chapter 11: Financial Services	4. Minimum Standard of Treatment in Article 11.2 (suspend subparagraph 2(b), footnote 3, and Annex 11-E)	Foreign investors in the financial services sector will no longer be able to make an ISDS claim against member governments for violating the minimum standard of treatment obligation.
Chapter 13: Telecommunications	5. Article 13.21.1(d): Resolution of Telecommunications Disputes	This provision suspends a process for reconsideration of decisions made by telecommunications regulatory bodies.
Chapter 15: Government Procurement	6. Article 15.8.5: Conditions for Participation (suspend commitments relating to labor rights in conditions for participation)	The suspended provision clarifies that procuring entities may promote compliance with international labor rights as part of their procurement processes.
	7. Article 15.24.2: Further Negotiations (suspend “No later than 3 years after the date of entry into force the Agreement”)	Member countries have agreed to postpone the Agreement’s in-built agenda to enhance government procurement commitments by two years.

Chapter	Suspended Provision	Effect of the Suspension
Chapter 18: Intellectual Property	8. Article 18.8: National Treatment Footnote 4 (suspend final two sentences)	The suspended provision relates to technical aspects of non-discriminatory treatment obligations concerning copyright works, phonograms and performances.
	9. Article 18.37: Patentable Subject Matter (suspend Paragraph 2 and Paragraph 4, second sentence)	The Parties are no longer required to make patents available for either new uses of known product, new methods of using a known product or new processes of using a known product. Patents are no longer required to be available for inventions derived from plants.
	10. Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays	The Parties are no longer required to adjust a patent's term of protection to compensate the patent owner if there are unreasonable delays in a patent office's issuance of patents.
	11. Article 18.48: Patent Term Adjustment for Unreasonable Curtailment	The Parties are no longer required to adjust a pharmaceutical patent's term of protection to compensate the patent owner for unreasonable curtailment of the effective term of a patent due to the marketing approval process for a pharmaceutical product.
	12. Article 18.50: Protection of Undisclosed Test or other Data	The Parties are no longer required to maintain 5 years of protection for test or other data submitted to regulatory authority for the purposes of obtaining regulatory approval to market a pharmaceutical product.
	13. Article 18.51: Biologics	The Parties are no longer required to maintain 5 years of protection for test or other data submitted to a regulatory authority for the purposes of obtaining regulatory approval to market a biologic pharmaceutical product.
	14. Article 18.63: Term of Protection for Copyright and Related rights	There will no longer be a requirement for a copy right term of protection for the life of the author plus 70 years.
	15. Article 18.68: Technological Protection Measures	The Parties are no longer required to impose civil remedies and criminal penalties for the circumvention of technologies that control access to protected copyright works.
	16. Article 18.69: Rights Management Information	The Parties are no longer required to impose civil remedies and criminal penalties for altering or removing information attached to a protected copyright work that identifies the work, author or terms of use of the work.
	17. Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals	The Parties are no longer required to impose civil remedies and criminal penalties for decoding encrypted satellite signals without authorization.
18. Article 18.82: ISP Liability and Annexes 18-E and 18-F	The Parties are no longer required to develop a legal framework for online service providers to cooperate with rights holders in deterring online copy right infringement.	
Chapter 20: Environment	19. Article 20.17.5: Conservation and Trade (measures to combat trade)(suspend "or another applicable law" and footnote 26).	The Parties are no longer required to impose measures to combat trade in wild flora and fauna that were taken or traded in another jurisdiction, in violation of the laws of that jurisdiction.
Chapter 26: Transparency and Anti-corruption	20. Annex 26A: Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices (suspend Article 3 on Procedural Fairness)	The suspended provisions relate to processes to ensure the transparency and procedural fairness of systems related to the listing and pricing of pharmaceutical products and medical devices.
Annex IV- State-Owned Enterprises and Designated Monopolies	21. Malaysia: suspension of "after signature of this Agreement"	Malaysia will commence certain commitments with regard to its state-owned enterprise, Petronas, from the date of entry into force of the Agreement, rather than from the date of signature.

Chapter	Suspended Provision	Effect of the Suspension
Annex II- Investment and Cross-Border Trade in Services	22. Brunei (with respect to Coal- paragraph 3): suspension of “after signature of this Agreement”	Brunei will commence certain commitments with regard to coal from the date of entry into force of the Agreement, rather than from the date of signature.

Annex II

CPTPP Provisions

Article 1: Incorporation of the Trans-Pacific Partnership Agreement

1. The Parties hereby agree that, under the terms of this Agreement, the provisions of the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016 (“the TPP”) are incorporated, by reference, into and made part of this Agreement *mutatis mutandis*, except for Article 30.4 (Accession), Article 30.5 (Entry into Force), Article 30.6 (Withdrawal) and Article 30.8 (Authentic Texts). For greater certainty, nothing in this Agreement shall provide any rights to any non-Party to this Agreement.
2. For the purposes of this Agreement, references to the date of signature in the TPP shall mean the date of signature of this Agreement.
3. In the event of any inconsistency between this Agreement and the TPP, when the latter is in force, this Agreement shall prevail to the extent of the inconsistency.

Article 2: Suspension of the Application of Certain Provisions

Upon the date of entry into force of this Agreement, the Parties shall suspend the application of the provisions set out in the Annex to this Agreement, until the Parties agree to end suspension of one or more of these provisions. For greater certainty, any agreement by the Parties to end a suspension shall only apply to a Party upon the completion of that Party’s applicable legal procedures.

Article 3: Entry into Force

1. This Agreement shall enter into force 60 days after the date on which at least six or at least 50 percent of the number of signatories to this Agreement, whichever is smaller, have notified the Depositary in writing of the completion of their applicable legal procedures.
2. For any signatory to this Agreement for which this Agreement has not entered into force under paragraph 1, this Agreement shall enter into force 60 days after the date on which that signatory has notified the Depositary in writing of the completion of its applicable legal procedures.

Article 4: Withdrawal

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the overall contact points designated under Article 27.5 (Contact Points) of the TPP.
2. A withdrawal shall take effect six months after a Party provides written notice to the Depositary under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

Article 5: Accession

After the date of entry into force of this Agreement, any State or separate customs territory may accede to this Agreement, subject to such terms and conditions as may be agreed between the Parties and that State or separate customs territory.

Article 6: Review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Further to Article 27.2 (Functions of the Commission) of the TPP, if the entry into force of the TPP is imminent or if the TPP is unlikely to enter into force, the Parties shall, on request of a Party, review the operation of this Agreement so as to consider any amendment to this Agreement and any related matters.

Article 7: Authentic Texts

The English, Spanish and French texts of this Agreement are equally authentic. In the event of any divergence between those texts, the English text shall prevail.

Annex III

Accession Provisions of the TPP

Article 30.4: Accession

1. This Agreement is open to accession by:
 - (a) any State or separate customs territory that is a member of APEC; and
 - (b) any other State or separate customs territory as the Parties may agree,that is prepared to comply with the obligations in this Agreement, subject to such terms and conditions as may be agreed between the State or separate customs territory and the Parties, and following approval in accordance with the applicable legal procedures of each Party and acceding State or separate customs territory (accession candidate).
2. A State or separate customs territory may seek to accede to this Agreement by submitting a request in writing to the Depositary.
3. (a) Following receipt of a request under paragraph 2, the Commission shall, provided in the case of paragraph 1(b) that the Parties so agree, establish a working group to negotiate the terms and conditions for the accession. Membership in the working group shall be open to all interested Parties.

(b) After completing its work, the working group shall provide a written report to the Commission. If the working group has reached agreement with the accession candidate on proposed terms and conditions for accession, the report shall set out the terms and conditions for the accession, a recommendation to the Commission to approve them, and a proposed Commission decision inviting the accession candidate to become a Party to this Agreement.
4. For the purposes of paragraph 3:
 - (a) A decision of the Commission to establish a working group under paragraph 3(a) shall be deemed to have been taken only if:
 - (i) all Parties have agreed to the establishment of a working group; or
 - (ii) in the event that a Party does not indicate agreement when the Commission makes a decision to establish a working group under paragraph 3(a), that Party has not objected in writing within seven days of the date on which the Commission so decides.
 - (b) A decision of the working group under paragraph 3(b) shall be deemed to have been taken only if:
 - (i) all Parties that are members of the working group have indicated agreement; or
 - (ii) in the event that a Party that is a member of the working group does not indicate agreement when the working group provides its report to the Commission, that Party has not objected to the report in writing within seven days of the date on which the working group provides its report.
5. If the Commission adopts a decision approving the terms and conditions for an accession and inviting an accession candidate to become a Party, the Commission shall specify a period, which may be subject to extension by agreement of the Parties, during which the accession candidate may deposit an instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession.
6. An accession candidate shall become a Party to this Agreement, subject to the terms and conditions for the accession approved in the Commission's decision, either on:
 - (a) the 60th day after the date on which the accession candidate deposits an instrument of accession with the Depositary indicating that it accepts the terms and conditions for the accession; or
 - (b) the date on which all Parties have notified the Depositary that they have completed their respective applicable legal procedures,whichever is later.

President Trump Extends Section 232 Exemptions for Argentina, Australia, Brazil, Canada, the European Union, and Mexico; Implements Steel Quota Agreement with South Korea

On April 30, 2018, President Trump signed Proclamations extending the exemption of certain steel and aluminum imports from tariffs imposed on those articles on March 23, 2018, pursuant to Section 232 of the Trade Expansion Act of 1962.³ Under the Proclamations, exemptions for covered imports from Canada, Mexico, and the European Union (EU) will expire on June 1, 2018, while exemptions for covered imports from Argentina, Australia, and Brazil are extended indefinitely because the United States has agreed in principle with those countries on “satisfactory alternative means” to address the Trump administration’s stated national security concerns. The latter exemptions will remain in effect until the details of the new agreements are finalized. Absent the Proclamations, the Section 232 tariffs would have taken effect on May 1, 2018 with respect to all of these steel and aluminum imports.

The steel Proclamation also implements a March 28, 2018 agreement between the United States and South Korea, pursuant to which steel imports from South Korea will be excluded from the steel tariff but subject to a product-specific quota that limits import quantities to 70 percent of the respective average annual import volumes from 2015 to 2017. The two countries did not reach any agreement regarding aluminum imports, nor has South Korea received another temporary exemption from the aluminum tariff. The Section 232 tariff on aluminum articles therefore took effect with respect to imports from South Korea on May 1, 2018.

Finally, the Proclamations clarify certain technical issues related to foreign-trade zones and “duty drawback”. An overview of the Proclamations is provided below.

Temporary Exemptions: Canada, Mexico, and the European Union

The Proclamations provide that imports of steel and aluminum articles from Canada, Mexico, and the EU will remain exempt from the Section 232 tariffs until 12:01 a.m. eastern daylight time on June 1, 2018. These temporary exemptions will apply only with respect to articles that are “entered for consumption, or withdrawn from warehouse for consumption, through the close of May 31, 2018[.]”

The Proclamations note that the President has temporarily extended the exemptions of Canada, Mexico, and the EU through June 1 because the United States is continuing discussions with these countries regarding steel and aluminum imports, and because the President has determined that “the necessary and appropriate means to address the threat to the national security” is to continue these discussions and to extend the temporary exemptions, “at least at this time.” The Proclamations also state that, unless the President determines by further proclamations that the United States has reached a satisfactory alternative means to remove the threatened impairment to the national security from imports of steel and aluminum articles from Canada, Mexico, and the EU, the Section 232 tariffs will take effect on June 1, 2018, for these countries. A White House statement issued concurrently with the Proclamations states that the Trump administration is extending its negotiations with Canada, Mexico, and the EU “for a final 30 days”, suggesting that the administration does not intend to provide further temporary exemptions beyond June 1, 2018. However, White House Press Secretary Sarah Sanders subsequently refused to confirm that the exemptions will not be extended again.

Agreements in Principle: Argentina, Australia, and Brazil

The Proclamations provide that imports of steel and aluminum articles from Argentina, Australia, and Brazil are exempt from the Section 232 tariffs, and do not set an expiration date for these exemptions. The Proclamations note instead that, because the United States has agreed in principle with these countries, “it is unnecessary to set an

³ Click [here](#) to view the Proclamation on steel imports and [here](#) to view the Proclamation on aluminum imports. CBP’s bulletin regarding the quota system for Korea may be viewed [here](#).

expiration date for the exemptions.” The Proclamations further state that the President will consider re-imposing the Section 232 tariffs if the agreements are not finalized shortly.

The White House has not provided any details regarding the terms of the agreements in principle with Argentina, Australia, and Brazil, but it is expected that the agreements will involve quota arrangements similar to the one agreed to by Korea (see below). Trump administration officials have indicated that they are requesting the establishment of quotas as a condition for granting any long-term Section 232 exemptions, and a White House statement issued alongside the Proclamations states that, in the negotiations regarding long-term exemptions, “the Administration is focused on quotas that will restrain imports, prevent transshipment, and protect the national security.” According to press reports, the United States in its negotiations with Brazil has proposed two types of product-specific quotas, depending on the specific product: (1) imports of finished steel products from Brazil would be limited to 70 percent of their three-year average (during the period of 2015-2017); and (2) imports of semi-finished steel products from Brazil would be limited to 100 percent of their three-year average during the same period.

Steel Quota Agreement: South Korea

The steel Proclamation states that the United States has successfully concluded discussions with South Korea on “satisfactory alternative means” to address the Trump administration’s national security concerns regarding steel imports from South Korea. These “alternative means” include (1) unspecified measures “to reduce excess steel production and excess steel capacity”; and (2) measures “that will contribute to increased capacity utilization in the United States, including a quota that restricts the quantity of steel articles imported into the United States from South Korea.” The Office of the US Trade Representative (USTR) previously announced on March 28 that, pursuant to this agreement, “Korean imports of steel products into the United States will be subject to a product-specific quota equivalent to 70% of the average annual import volume of such products during the period of 2015-17.” The steel Proclamation directs U.S. Customs and Border Protection (CBP) to implement this quota “as soon as practicable, taking into account all steel articles imports from South Korea since January 1, 2018.”

On May 1, 2018, CBP issued a Quota Bulletin providing the following information about the quota on imports of steel articles from South Korea:

- **Product categories.** CBP has provided a list identifying: (1) 54 different categories of steel products; (2) the 8-digit Harmonized Tariff Schedule of the United States (HTSUS) codes comprising each of the 54 steel product categories; and (3) the annual aggregate quota limits (in kilograms) applicable to imports of each category of steel product from Korea. The annual aggregate quota limits will apply “for the period starting with calendar year 2018 and for subsequent years, unless modified or terminated.” The bulletin indicates that the quota limits applicable to certain steel product categories for calendar year 2018 already have been filled, and that, because the quotas are “absolute quotas” (see below), entry of these products for U.S. consumption will not be permitted during the 2018 quota period.
- **Restraint level.** The bulletin indicates that the quotas are “absolute quotas”, meaning that the subject merchandise may not, pursuant to 19 C.F.R. §132.5(a), be imported into the United States for consumption after the applicable quota limit is reached. Pursuant to 19 C.F.R. §132.5(c), merchandise imported in excess of an absolute quota “may be held for the opening of the next quota period by placing it in a foreign-trade zone or by entering it for warehouse, or it may be exported or destroyed under Customs supervision.” CBP’s bulletin therefore notes that options after the quota limit is reached “include warehouse, foreign trade zone, exportation or destruction.”

The bulletin also states that the quantity of imports under each category of steel product during any one of the following four periods in any year will not be permitted to exceed 30 percent of the annual aggregate quota limit

for that year: (1) January through March, (2) April through June, (3) July through September, or (4) October through December.⁴ With this requirement, CBP has provided a small amount of flexibility regarding the timing of subject imports during the calendar year (rather than setting quarterly limits equivalent to 25 percent of the annual aggregate quantity); however, this approach also leaves open the possibility that fourth quarter quota levels will be much smaller than those in the previous three quarters.

Additional information regarding the operation of the quota system may be included in the Annex to the steel Proclamation, which will become publicly available in the next few days.

Foreign-trade zones and duty drawback

The Proclamations clarify that goods that enter an FTZ in “domestic status” are not subject to the duties imposed pursuant to Proclamations 9704 and 9705 as amended, and that goods further manufactured in an FTZ cannot become subject to the duties by means of that manufacture. However, a “privileged foreign status” good which enters into an FTZ cannot lose its status (*e.g.* by further manufacturing in the FTZ) and will thus remain subject to the duties upon entering the U.S. for consumption. The privileged foreign status goods are subject to the duties upon entering the U.S. for consumption even if the goods entered the FTZ before the Proclamations went into effect.

Similarly, the Proclamations clarify that no duty drawback is available with respect to the duties imposed pursuant to Proclamations 9704 and 9705 as amended.

Outlook

Based on the announced details of the quota system for Korea, the reported details of the U.S. government’s proposals to Brazil, and public statements from Trump administration officials, it is expected that the forthcoming agreements with Argentina, Australia, and Brazil will involve quota regimes with the same general characteristics (*i.e.*, product-specific, absolute quotas equivalent to approximately 70 percent of average annual import levels from 2015 to 2017, and potentially higher quota limits for semi-finished steel products). Prospects for the other exempted countries are less clear: Trump administration officials have indicated that they are requesting the establishment of quotas as a condition for granting any long-term exemptions from the Section 232 tariffs, but Canada, Mexico, and the EU have publicly rejected such proposals. Moreover, although several countries other than those specifically mentioned in the April 30 Proclamations have reportedly approached the United States to seek exemptions from the Section 232 tariffs, the Trump administration has not provided any information on the status of these discussions.

The Annex to the Section 232 steel Proclamation will become publicly available in the next few days and is expected to contain additional technical details (*e.g.*, HTSUS modifications). It is expected that the U.S. government will provide additional information regarding management of the quota system for Korea (*e.g.*, information regarding export certificates) either in the forthcoming Annex or through other means.

US Department of Commerce Initiates Section 232 Investigation of Automobiles and Automotive Parts

On May 23, 2018, the US Department of Commerce (“DOC”) announced the initiation of an investigation pursuant to Section 232 of the Trade Expansion Act of 1962 (“Section 232”) regarding the effects of imported vehicles (automobiles, SUVs, vans and light trucks) and automotive parts on the national security of the United States. The precise scope of the investigation, especially as regards automotive parts and countries of origin, is not yet clear.

⁴ For example, if imports reach 30 percent of the annual aggregate quantity during each of the first three periods, imports during the fourth period would be limited to 10 percent of the annual aggregate quantity.

The forthcoming Federal Register Notice announcing the investigation might clarify its scope, but recent agency practice indicates that this information might not be provided until much later in the investigation.⁵

DOC's findings in the Section 232 investigation, if affirmative, would provide the President with unilateral authority to impose considerable tariffs or other import restrictions on imports of vehicles and parts into the United States. The restrictions would be imposed on national security grounds pursuant to Section 232 – the same law the Trump administration recently used to impose tariffs and quotas on a broad range of steel and aluminum imports into the United States. DOC's statement announcing the investigation, which is provided in **Annex I** to this report, notes that the agency initiated the investigation at the direction of the President. The White House confirmed this in a short statement from the President.⁶

This report summarizes the legal framework for Section 232, the recent actions on steel and aluminum, and the prospects for the new Section 232 investigation of vehicle and automotive part imports. The largest exporting countries of automobiles and automotive parts to the United States are shown in **Annex II** and **Annex III**, respectively.

Legal Framework for Section 232

Section 232 provides the Secretary of Commerce with the authority to conduct investigations to determine the effects of imports of any article on the national security of the United States. The statute authorizes the Secretary to conduct an investigation if requested by the head of any department or agency, upon application of an interested party, or upon his own motion.⁷ The Bureau of Industry and Security ("BIS"), within DOC, conducts the Section 232 investigation. BIS determines whether the "effect of the importation of" an item "in such quantities or under such circumstances" "threaten to impair the national security."⁸

The BIS must conclude its investigation no later than 270 days after initiation. If BIS finds in the affirmative, and the President concurs, the President must "determine the nature and duration of the action that must be taken to adjust imports of the article and its derivatives so that such imports will not threaten to impair the national security."⁹ BIS must address three central issues in a Section 232 investigation: (1) what constitutes "national security" (for purposes of evaluating the nexus, if any, between the products in questions and U.S. national security); (2) what "effects of imports" should be considered; and (3) when do those imports "threaten to impair" the national security? The statute provides no limits on the measures the President may employ to "adjust imports."

Annex IV to this report sets out the procedures for a Section 232 investigation and their respective timeframes.

Recent Section 232 Investigations of Steel and Aluminum

As noted above, the Trump administration already has utilized Section 232 to impose broad tariffs on imports of steel and aluminum into the United States. US Secretary of Commerce Wilbur Ross initiated the Section 232 investigations of steel and aluminum imports in April 2017 at the direction of the President. In the investigations, DOC determined

⁵ For example, the recent Section 232 investigations of steel and aluminum imports were initiated in April 2017, but detailed information on their product scope was not provided until February 2018, when the U.S. Department of Commerce released its reports on its findings in the investigations.

⁶ <https://www.whitehouse.gov/briefings-statements/statement-president-potential-national-security-investigation-automobile-imports/>: "Today, I met with Secretary of Commerce Wilbur Ross to discuss the current state of our automobile industry. I instructed Secretary Ross to consider initiating a Section 232 investigation into imports of automobiles, including trucks, and automotive parts to determine their effects on America's national security. Core industries such as automobiles and automotive parts are critical to our strength as a Nation."

⁷ See 19 U.S.C. § 1862(b)(1)(A).

⁸ See 19 U.S.C. § 1862(b)(3)(A).

⁹ 19 U.S.C. § 1862(c)(1)(A).

that imports of steel and aluminum “threaten to impair the national security” of the United States. DOC submitted the results of the investigations to President Trump in January 2018, along with its recommendations that the President take action to “adjust imports” of steel and aluminum in order to eliminate the threatened impairment of US national security.

In contrast to prior Section 232 investigations, DOC in the steel and aluminum investigations applied an expansive interpretation of “national security”, essentially regarding any threat to the economic welfare of US producers as a threat to national security.

On March 8, 2018, President Trump concurred with DOC’s findings and signed Proclamations imposing tariffs of 25 percent *ad valorem* on steel imports and 10 percent *ad valorem* on aluminum imports from all countries except Canada and Mexico. The tariffs were scheduled to take effect on March 23, 2018. The proclamations also envisioned a process for obtaining exclusions for specific countries and specific products, but provided limited details:

- With respect to **country exemptions**, the proclamations state that “[a]ny country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country,” and that “[s]hould the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security...[the President] may remove or modify the restriction” on steel or aluminum articles imports from that country. A White House fact sheet released alongside the proclamations notes that the United States Trade Representative (USTR) will be responsible for negotiations with countries that seek modification or removal of the tariffs, although President Trump instructed Commerce Secretary Wilbur Ross to negotiate with the European Union (EU). Neither Secretary Ross nor USTR issued complete guidelines for country exclusions.

Nevertheless, on March 22, 2018, President Trump signed Proclamations temporarily exempting Australia, Argentina, Brazil, the EU, and South Korea (as well as Canada and Mexico) from the tariffs until May 1, 2018, because these countries had engaged in negotiations with the United States regarding “satisfactory alternative means to address the threatened impairment to the national security[.]” The tariffs went into effect for all other countries on March 23, 2018.

Subsequently, on April 30, 2018, President Trump signed Proclamations (1) extending the temporary exemptions for covered imports from Canada, Mexico, and the EU until June 1, 2018; (2) exempting steel imports from South Korea from the tariff, because South Korea had agreed to a product-specific quota that limits import quantities to 70 percent of the respective average annual import volumes from 2015 to 2017; and (3) extending the exemptions for covered imports from Argentina, Australia, and Brazil indefinitely because the United States had reached agreements in principle with those countries on “satisfactory alternative means” to address the Trump administration’s stated national security concerns. The Trump administration reportedly has demanded that any country seeking a permanent exemption from the tariffs accept a restrictive quota similar to that agreed to by South Korea.

- With respect to **product exclusions**, DOC on March 19, 2018 established a process for interested parties in the United States to request the exclusion of particular products from the tariffs. Exclusions may be granted for products that are in short supply or based on national security considerations. However, DOC has not yet granted any exclusions, and any exclusions granted may be narrowly defined (*i.e.*, limited not only to a particular product and 10-digit HTS code, but also to particular countries of origin and foreign suppliers). In addition, most product exclusions will likely be granted only to the party that requested the exclusion. US business groups and Members of Congress have complained about the onerous and technical nature of the product exclusion process.

Outlook

The outcome of the new Section 232 investigation of automobiles and automotive parts is currently unclear. Many observers have speculated that the Trump administration initiated the investigation to pressure the governments of Canada and Mexico to accept US demands for more stringent rules of origin for automobiles in the ongoing renegotiation of the North American Free Trade Agreement (NAFTA). Indeed, when asked on May 23 about the Section 232 investigation of automobiles, the President responded by lamenting the “difficult” NAFTA negotiations. The investigation might also be a response to (1) the recent decisions by Japan and the EU to notify the World Trade Organization (WTO) of their plans to impose retaliatory tariffs against US exports in response to the recent Section 232 tariffs on steel and aluminum; and (2) the EU’s reluctance to accept US demands for a restrictive quota on EU steel and aluminum exports to the United States in exchange for a permanent exemption of the EU from the Section 232 tariffs on those products. Given these issues, it is possible that the investigation will be terminated without findings or import measures, depending on the outcome of these various negotiations.

That said, the investigation has been initiated and could very well gain momentum that results in the imposition of import restrictions on automobiles and automotive parts, particularly if the NAFTA and other negotiations do not satisfy President Trump and/or if he sees political value in continuing the case. In our view there is a significant risk that the Section 232 investigation does continue due to the contentious nature of the NAFTA and Section 232 negotiations; President Trump’s longstanding interest in automobile tariffs and trade; and the general volatility of the administration’s trade policies. At the very least, we expect DOC to issue a Federal Register notice officially announcing the case and providing details on interested party participation and key deadlines.

Next Steps in the Section 232 Investigation

The opening of a Section 232 investigation is clearly an important development for the automotive sector, and should proceed quickly. Interested parties in the United States and abroad may therefore wish to assess (1) the risks arising from this investigation on their supply chains and trade flows; (2) factual and legal arguments protecting their commercial interests; and (3) potential near-term mitigation strategies.

With respect to participating in the investigation, written submissions will likely be due relatively soon after initiation, followed by a public hearing. Interested party questionnaires could be issued, but they are not required and were not used in the recent steel and aluminum investigations. As the recent steel and aluminum cases indicate, the timeframe for the decision by the President is difficult to predict: it had initially been reported that President Trump wished to issue his proclamations in summer 2017, but they in fact came in spring 2018.

The steel and aluminum Section 232 cases also show that the process for countries or individual companies to seek exemptions/exclusions from eventual duties is likely to be complicated, as can be seen from the still-ongoing negotiations with some countries, the vast number (over 11,000) of exclusion requests, and the fact that no company has yet obtained an exclusion.

Annex I: Statement by the US Department of Commerce confirming the initiation of the Section 232 Investigation

U.S. Department of Commerce Initiates Section 232 Investigation into Auto Imports

Wednesday, May 23, 2018

Today, following a conversation with President Donald J. Trump, U.S. Secretary of Commerce Wilbur Ross initiated an investigation under Section 232 of the Trade Expansion Act of 1962, as amended. The investigation will determine whether imports of automobiles, including SUVs, vans and light trucks, and automotive parts into the United States threaten to impair the national security as defined in Section 232. Secretary Ross sent a letter to Secretary of Defense James Mattis informing him of the investigation.

“There is evidence suggesting that, for decades, imports from abroad have eroded our domestic auto industry,” said Secretary Ross. “The Department of Commerce will conduct a thorough, fair, and transparent investigation into whether such imports are weakening our internal economy and may impair the national security.”

During the past 20 years, imports of passenger vehicles have grown from 32 percent of cars sold in the United States to 48 percent. From 1990 to 2017, employment in motor vehicle production declined by 22 percent, even though Americans are continuing to purchase automobiles at record levels. Now, American owned vehicle manufacturers in the United States account for only 20 percent of global research and development in the automobile sector, and American auto part manufacturers account for only 7 percent in that industry.

Automobile manufacturing has long been a significant source of American technological innovation. This investigation will consider whether the decline of domestic automobile and automotive parts production threatens to weaken the internal economy of the United States, including by potentially reducing research, development, and jobs for skilled workers in connected vehicle systems, autonomous vehicles, fuel cells, electric motors and storage, advanced manufacturing processes, and other cutting-edge technologies.

Following today’s announcement, the Department of Commerce will investigate these and other issues to determine whether imports of automobiles and automotive parts threaten to impair the national security. A notice will be published shortly in the Federal Register announcing a hearing date and inviting comment from industry and the public to assist in the investigation.

Annex II: US Imports of Automobiles under HTS Code 8703 (Motor Cars and Other Motor Vehicles Designed to Transport People (Other Than Public-Transport Type), Including Station Wagons and Racing Cars)¹⁰

¹⁰ Source: USITC Dataweb

Country	Value (USD)			
	2017	2017Q1	2018Q1	Q1 Difference
Canada	43,291,638,538	11,252,667,397	10,160,408,168	-10%
Japan	42,967,401,246	10,628,435,902	11,089,238,052	4%
Mexico	30,612,186,884	7,067,900,833	8,406,032,142	19%
Germany	23,250,952,230	5,303,364,736	4,617,206,867	-13%
Korea	15,703,979,908	4,538,258,639	3,357,447,655	-26%
United Kingdom	8,757,130,508	2,311,372,871	2,713,133,096	17%
Italy	4,859,229,880	987,828,111	999,318,969	1%
Sweden	2,026,533,437	413,077,802	611,582,551	48%
Slovak Republic	1,996,670,751	353,484,619	334,261,544	-5%
China	1,781,378,822	415,236,414	255,028,200	-39%
Hungary	1,242,924,328	196,786,037	229,524,477	17%
Finland	1,191,118,791	264,767	514,843,469	194352%
South Africa	1,180,911,379	140,090,297	212,376,694	52%
Austria	1,021,530,055	194,670,996	395,732,279	103%
Turkey	889,990,422	45,779,910	228,770,146	400%
Spain	811,821,416	135,409,099	284,127,383	110%
Netherlands	550,110,395	96,340,067	148,395,260	54%
Belgium	543,977,619	179,071,178	107,031,172	-40%
France	218,157,569	78,115,503	26,166,310	-67%
Thailand	212,768,215	88,332,085	74,300,032	-16%

Annex III: US Imports of Automotive Parts under HTS Codes 8706, 8707, and 8708¹¹

Country	Value (USD)			
	2017	2017Q1	2018Q1	Q1 Difference

¹¹ Source: USITC Dataweb

Mexico	22,514,531,359	5,638,457,515	6,102,534,586	-8%
China	9,183,444,023	2,174,733,859	2,622,246,170	-21%
Canada	9,017,921,522	2,367,014,972	2,489,146,579	-5%
Japan	6,939,466,653	1,730,330,322	1,785,865,351	-3%
Korea	3,960,406,849	1,028,832,772	870,221,267	15%
Germany	3,132,789,704	726,470,893	830,039,398	-14%
Taiwan	1,575,328,058	377,546,481	399,838,156	-6%
India	1,013,869,597	229,674,492	309,913,338	-35%
Italy	607,193,830	145,948,874	175,313,225	-20%
Thailand	439,111,327	115,605,223	103,434,092	11%
United Kingdom	326,879,801	76,221,624	93,019,764	-22%
Brazil	290,773,660	64,023,507	81,529,235	-27%
France	287,546,686	68,226,460	71,525,962	-5%
Turkey	261,695,922	60,574,311	76,732,612	-27%
Spain	225,540,202	56,348,815	73,368,108	-30%
Czech Republic	191,209,936	40,165,608	48,803,494	-22%
Poland	166,755,454	40,705,324	48,020,287	-18%
Austria	138,800,320	27,967,209	33,820,878	-21%
Vietnam	128,793,051	29,122,396	31,057,571	-7%
Sweden	125,656,462	23,900,777	39,728,758	-66%

Annex IV: Action Items and Timeframes for a Section 232 Investigation

Action	Timeframe	Statute/Regulation	Recent Practice
Initiation	"Immediately"	Upon request of the head of any department or agency, upon application of an interested party, or upon his own motion, the Secretary of Commerce "shall immediately initiate an appropriate investigation" and notify the Secretary of Defense of the investigation. ¹²	In the last Section 232 investigation initiated by petition (<i>Iron Ore and Semi-Finished Steel</i> , 2001), USDOC initiated the investigation 16 days after receiving the petition. ¹³ Prior investigations initiated by petition were initiated within similar timeframes (e.g., <i>Crude Oil and Petroleum Products</i> , 1994 (25 days); <i>Ceramic Semiconductor Packaging</i> , 1992 (9 days)).
Public comment period	Approximately 2 weeks after initiation (no statutory requirement or deadline)	In the course of any investigation, the Secretary shall, "if it is appropriate and after reasonable notice," afford interested parties an opportunity to present information and advice relevant to the investigation. ¹⁴ A public notice shall be published in the Federal Register soliciting from any interested party written comments, opinions, data, information or advice relative to the investigation. ¹⁵	In the recent Section 232 investigations of steel and aluminum, USDOC published FR notices within two weeks after the date of initiation to request public comments on the investigation. ¹⁶ Parties were given 31 days (for steel) and 51 days (for aluminum) to submit comments.
Public hearing	Approximately 1-2 months after initiation (no statutory requirement or deadline)	In the course of any investigation, the Secretary shall hold public hearings "if it is appropriate and after reasonable notice[.]" ¹⁷ A notice of the hearing shall be published in the Federal Register. ¹⁸	In the recent investigations of steel and aluminum, USDOC published FR notices within two weeks after the date of initiation to announce the public hearing schedule. Hearings were held 35 days after initiation (for steel) and 57 days after initiation (for aluminum).
Questionnaires	No statutory requirement or deadline	In addition to requesting written comments, "further information may be requested by the Department from other sources through the use of questionnaires, correspondence, or other appropriate means." ¹⁹	In <i>Iron Ore and Semi-Finished Steel</i> , USDOC sent surveys to approximately 175 U.S. producers and potential consumers of the subject merchandise and conducted visits to sites "associated with the production shipment, and consumption" thereof. ²⁰ DOC's report did not specify when these actions were taken. In the recent investigations of steel and aluminum, USDOC did not send surveys.
Submission of DOC report	270 days after initiation	Within 270 days after the date on which an investigation is initiated, the Secretary shall submit to the President a report on (i) the findings of the investigation with respect to the effect of the subject imports upon the national security and, based on such findings; (ii) the recommendations of the Secretary for action or inaction. ²¹ If the Secretary finds that the article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the Secretary shall so advise the President in the report.	In the recent steel investigation, DOC submitted its report to the President 267 days after initiating the investigation. ²²

¹² 19 U.S.C. § 1862(b)(1)

¹³ <https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>

¹⁴ 19 U.S.C. § 1862(b)(2)(A)(iii)

Action	Timeframe	Statute/Regulation	Recent Practice
Publication of DOC report	No statutory deadline	Any portion of the report that does not contain classified information or proprietary information shall be published in the Federal Register. ²³	In the recent steel investigation, USDOC published its report on February 16, 2018 – 35 days after submitting it to the President. In <i>Iron Ore and Semi-Finished Steel</i> , DOC published its report (which contained a negative finding) 78 days after submitting the report to the President. ²⁴
Presidential determination and action	90 days after receipt of DOC report	Within 90 days after receiving a report in which the Secretary finds that an article is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall (i) determine whether the President concurs with the finding of the Secretary, and (ii) if the President concurs, determine the nature and duration of the action that, in the judgment of the President, must be taken to adjust the imports of the article and its derivatives. The President must implement any such action within 15 days after making the determination. ²⁵	In the recent investigation of steel, the President announced his determination and action on March 8, 2018 – 56 days after receiving the USDOC report. ²⁶

U.S. Lawmakers, Trading Partners and Industry Groups React to U.S. Section 232 Investigation of Automobiles & Parts

American lawmakers, trading partners and industry groups have been highly critical of the May 23, 2018 initiation of an investigation under Section 232 of the Trade Expansion Act of 1962 (“Section 232”) regarding the effects of

¹⁵ 15 C.F.R. § 705.7(a)

¹⁶ <https://www.federalregister.gov/documents/2017/05/09/2017-09328/notice-of-request-for-public-comments-and-public-hearing-on-section-232-national-security> and <https://www.federalregister.gov/documents/2017/04/26/2017-08499/notice-request-for-public-comments-and-public-hearing-on-section-232-national-security-investigation>

¹⁷ 19 U.S.C. § 1862(b)(2)(A)(iii)

¹⁸ 15 C.F.R. § 705.8

¹⁹ 15 C.F.R. § 705.7(c)

²⁰ <https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file>

²¹ 19 U.S.C. § 1862(b)(3)(A)

²² <https://www.commerce.gov/news/press-releases/2018/01/statement-department-commerce-submission-steel-section-232-report>

²³ 19 U.S.C. § 1862(b)(3)(B)

²⁴ <https://www.federalregister.gov/documents/2002/01/15/02-977/report-on-the-effect-of-imports-of-iron-ore-and-semi-finished-steel-on-the-national-security>

²⁵ 19 U.S.C. § 1862(c)(B)

²⁶ <https://www.federalregister.gov/documents/2018/03/15/2018-05478/adjusting-imports-of-steel-into-the-united-states>

imported vehicles and automotive parts on the national security of the United States. Even individuals and groups representing automotive regions/industries or typically supportive of U.S. trade restrictions did not applaud the Trump administration's decision. This update to our May 24, 2018 report on the Section 232 investigation summarizes the most salient public comments, which reveal an overwhelming lack of support for the new Trump administration initiative.

Despite these comments, the Section 232 investigation will continue, at least until the current round of NAFTA negotiations is completed. According to our sources, the Trump administration sees the Section 232 case, in part, as increasing its leverage in the negotiations, which it aims to complete in the next three weeks in order to have the final agreement approved by Congress before the end of the year. However, U.S. Secretary of Commerce Wilbur Ross also has defended the new investigation and insisted that automotive imports raise legitimate national security questions, essentially repeating the Trump administration's rationale from the steel and aluminum Section 232 investigations, which resulted in new import restrictions ("economic security is military security, and without economic security you can't have military security.") Thus, the current investigation could continue even if a NAFTA deal is reached.

Responses from United States Lawmakers

Leadership

Senate Finance Committee Chair Senator Orrin Hatch (R-UT):

Commerce's 232 investigation into the national security implications of trade in automobiles, trucks and auto parts is deeply misguided.... For most Americans, cars are the second largest purchase they make, after their homes. Taxing cars, trucks and auto parts coming into the country would directly hit American families who need a dependable vehicle, whether they choose a domestic or a global brand.... Instead of taking from the pocketbooks of hard-working Americans, I urge the administration to remain focused on addressing China's trade practices and to work constructively with our trading partners to increase opportunities overseas for American businesses, farmers, ranchers and workers....²⁷

Senate Finance Committee Ranking Member Ron Wyden (R-OR): "[The administration] has yet to explain how this latest action fits into a coherent strategy to increase American auto jobs and wages for American workers, or whether it is just designed to create more chaos and confusion. Given the president's recent moves to pull back on enforcement against China, I increasingly doubt such a strategy exists."²⁸

Senate Committee on Homeland Security & Governmental Affairs Chair Ron Johnson (R-WI): "Unfortunately, prior Congresses have given the administration – any administration – an awful lot of authority in these areas. We need to start reclaiming some of that authority.... "I would really caution the administration from claiming national security interests when it's clearly an economic issue...."²⁹

Senate Agriculture Committee Chairman Pat Roberts (R-KS): "We heard rumors about it, but I just have a lot of problems with the way it's been handled and the potential, on the downside, I think, is very considerable."³⁰

²⁷ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

²⁸ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

²⁹ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

³⁰ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

House Ways & Means Chair Kevin Brady (R-TX), via his staff: “These products are a huge sector of our economy, and tariff action would have serious implications for American consumers. That said, he believes America’s trading partners need to reassess the status quo – their high tariffs imposed on goods and services hurt their consumers and the global economy. Chairman Brady is engaging with the administration as they conduct this investigation.... [Rep. Brady] is very concerned using Section 232 in the investigation to raise tariffs on automobiles, trucks, and parts....”³¹

Others

Senator Bob Corker (R-TN): “We did cede [trade authority] years ago, unfortunately, and probably we should be clawing some of it back.... [The move is] an abuse of authority that’s very blatant.... There’s no rational person that could think that we have a national security issue with auto manufacturing.... You can’t be going down that path where you’re starting – you’re acting as if you may impose tariffs on automobiles for national security reasons. That authority was put in place in 1962 and again, you start – it’s a dangerous path, and other countries can claim tariffs on whatever they deem they want to claim. They can just claim it’s a national security issue. So, it’s a very dangerous, inappropriate path to go down.”³² “There is no reason to use this provision to consider imposing tariffs on the automobile industry, and this appears to be either an attempt to affect domestic politics ahead of the election or for some other transactional purpose regarding ongoing trade discussions.”³³

Senator Debbie Stabenow (D-MI): “My bottom line is that we are making more cars in Michigan and are exporting our products, not our jobs. I will be reviewing the details of what has been proposed and expect that this investigation will be a long process.”³⁴

Senator Gary Peters (D-MI): “Maintaining a strong manufacturing base is essential to protecting our economy and our national security.... I am extremely concerned that any decline in our domestic manufacturing industry weakens America as we face aggression from global industrial powers like China and Russia.”³⁵

Senator Doug Jones (D-AL): “[Any comment] would be premature, given the moving target these tariff announcements from the administration have been to date....[I have] no idea yet how the state will be affected.”³⁶

Senator Sherrod Brown (D-OH): “I always want to find ways to help workers in Toledo and Youngstown make more cars, but I don’t know exactly where the president’s going with this.... His policy changes day to day, on tariffs, on trade, on China, on 232. I want to see a coherent policy . . . because I don’t think anyone knows what this is about.... [Steel] is a national security issue. I don’t know that he can convince the world that this is national security. That’s why I want to hear what he actually knows and what he actually believes. It’s just not clear.”³⁷

³¹ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

³² <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

³³ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

³⁴ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

³⁵ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

³⁶ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

³⁷ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

Senator Pat Toomey (R-PA): “Raising taxes on Americans who choose to buy imported cars or trucks is a bad idea.... Doing it under the false pretense of national security -- Section 232 -- is an even worse idea, as it invites retaliation and weakens our credibility on actual trade disputes.”³⁸

Congressman Jim Cooper (D-TN): “Nissan, Volkswagen and other foreign companies employ thousands of Tennesseans & fuel our state’s booming auto industry.... Why impose tariffs when no one wants them? Consumers hate higher prices & fewer choices.”³⁹

Congressman Jeb Hensarling (R-TX): “The Honda Accord is not a threat to our national security.... However, taxing it with trade tariffs is a threat to the economic security of millions of hardworking American families.”⁴⁰

Senator Bob Casey (D-PA): While he hadn’t “looked at the summary of the decision they made,” he “was one who was calling for a 232 earlier than the last one that was put into action.... I’m always in favor of using this one among many tools we have to make sure our workers aren’t getting the short end of the stick.”⁴¹

Senator Rob Portman (R-OH): “The countries that send us the highest number of automobiles would be our allies in Europe and our allies in Japan.... And you need to be sure that automobiles are fairly traded. Also South Korea, also an ally.”⁴²

Senator Heidi Heitkamp (D-ND): “If that’s how we are going to define national security we better be careful and aware that the next time they do it on the other side -- it’s definitional.... So, if that’s definitional as national security someone else is going to raise the same kind of [concern]. What else are you opening this up to in that context? The one thing that I would say is that we just have a lot of irons in the fire on trade; it would be good to resolve a couple.”⁴³

Senator Roy Blunt (R-MO): “The president needs to use the national security waiver in ways that I think visibly meet the test... I didn’t think aluminum and steel met the test. I certainly don’t think automobiles I meet the test.”⁴⁴

Congressman Rick Larsen (D-WA): The Trump Administration views Section 232 as a “tool in their arsenal, but whether or not the trade act considers the import of cars as a matter of national security, I doubt it.”⁴⁵

Trading Partners

Canadian Foreign Minister Chrystia Freeland: “We know that cars manufactured in Canada — very often by U.S. companies, very often including very, very many U.S. parts, parts that have crossed the border many, many times as the car is made — the idea that those could in any way pose a national security threat to the United States is frankly absurd”⁴⁶

Canadian Prime Minister Justin Trudeau: “I am - even more than I was with steel and aluminum - trying to figure out where a possible national security connection is.... Taking that a step further into autos seems to me to be on

³⁸ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

³⁹ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

⁴⁰ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

⁴¹ <https://insidetrade.com/daily-news/lawmakers-pan-section-232-autos-probe-some-mulling-limits-presidential-trade-authority>.

⁴² <https://insidetrade.com/inside-us-trade/commerce-initiates-section-232-investigation-auto-imports>.

⁴³ <https://insidetrade.com/inside-us-trade/commerce-initiates-section-232-investigation-auto-imports>.

⁴⁴ <https://www.wsj.com/articles/trumps-gop-allies-worry-over-possible-new-u-s-auto-tariffs-1527179893>.

⁴⁵ <https://www.wsj.com/articles/trumps-gop-allies-worry-over-possible-new-u-s-auto-tariffs-1527179893>.

⁴⁶ <https://subscriber.politicopro.com/newsletters/morning-trade>.

even flimsier logical grounds... But we know that this is very much linked to ongoing negotiations around moving forward on NAFTA."⁴⁷

Mexico chief NAFTA negotiator, Kenneth Smith Ramos: The regional automotive sector "is one of the great #NAFTA success.... Conclusion: #trade is not a zero-sum game! We all win with #NAFTA."⁴⁸

Chinese Foreign Ministry spokesman Lu Kang: "[China opposes] abusing the clause on national security, because such an abuse would sabotage the multilateral trading regime and disrupt the normal international trading order."⁴⁹

EU Trade Commissioner Cecilia Malmstrom: ""We are concerned about the U.S. announcements.... Let's see where this investigation leads. As far as we can see, this is something that would be against WTO rules."⁵⁰

EU Commission spokesman Margaritis Schinas: "We believe that there is no justification for the U.S. to impose tariffs on steel and aluminium on grounds of national security.... Invoking national security would be even more far-fetched in the case of the car industry."⁵¹

UK spokesperson (unnamed): "We will continue to make the case for the benefits of free trade, and do not accept that the UK car industry poses a threat to US national security.... International car makers support huge numbers of high-skilled jobs in the UK, the US, and elsewhere."⁵²

Japan Trade Minister Hiroshige Seko: "If the U.S. imposes extreme trade restrictions (on autos and parts), the world market would be thrown into confusion."⁵³

Industry Association Representatives

U.S. Chamber of Commerce President and CEO Thomas J. Donohue:

The U.S. Chamber strongly opposes the administration's threat to impose tariffs on auto imports in the name of national security. If this proposal is carried out, it would deal a staggering blow to the very industry it purports to protect and would threaten to ignite a global trade war.... This isn't about national security. The administration has already signaled its true objective is to leverage this tariff threat in trade negotiations with Mexico, Canada, Japan, the European Union, and South Korea. These allies provide nearly all U.S. auto imports and are among America's closest partners. Neither they nor these imports endanger our national security in any way.... The president's Section 232 authorities should not be abused in this way, and doing so only encourages other nations to do likewise.⁵⁴

⁴⁷ <https://www.reuters.com/article/us-canada-politics-trudeau-exclusive/exclusive-canada-pm-raps-possible-u-s-auto-tariffs-says-linked-to-nafta-idUSKCN1IP2ZM>.

⁴⁸ <https://subscriber.politicopro.com/newsletters/morning-trade>.

⁴⁹ <https://insidetrade.com/daily-news/eu-china-say-us-cannot-justify-auto-tariffs-citing-national-security>.

⁵⁰ <https://insidetrade.com/daily-news/eu-china-say-us-cannot-justify-auto-tariffs-citing-national-security>.

⁵¹ <https://insidetrade.com/daily-news/eu-china-say-us-cannot-justify-auto-tariffs-citing-national-security>.

⁵² <https://insidetrade.com/daily-news/eu-china-say-us-cannot-justify-auto-tariffs-citing-national-security>.

⁵³ <https://insidetrade.com/daily-news/eu-china-say-us-cannot-justify-auto-tariffs-citing-national-security>.

⁵⁴ <https://www.uschamber.com/press-release/us-chamber-statement-potential-auto-tariffs>.

National Association of Manufacturers President and CEO Jay Timmons: “Manufacturers in the United States want to give every advantage to American workers. But incorrectly using the (national security provision) will create unintended consequences for U.S. manufacturing workers that will limit the chance for Americans to win, just as we do when government gets out of the way and allows us to lead.”⁵⁵

Alliance of Automobile Manufacturers (official statement): “We are confident that vehicle imports do not pose a national security risk to the U.S....Last year, 13 domestic and international automakers manufactured nearly 12 million vehicles in the U.S. The auto sector remains the leading exporter of manufactured goods in our country.”⁵⁶

American Automotive Policy Center President Matt Blunt: “We will follow this process closely, share our views with the administration and continue to work with them to open foreign markets for U.S.-built products and level the international trade playing field.”⁵⁷

Motor and Equipment Manufacturers Association: Tariffs on parts used to build other components “would adversely impact the success and growth of American manufacturing businesses. In addition, consumers need competitively priced aftermarket parts to repair and maintain their vehicles.”⁵⁸

American International Automobile Dealers Association President and CEO Cody Lusk: “It can’t be repeated enough: Tariffs are taxes. American families who can least afford a 25 percent price increase on vehicles will bear the burden of this tariff.... America’s 9,600 international nameplate auto franchises and their 577,000 American employees rely on competitively priced products to sustain their businesses and jobs. To treat auto imports like a national security threat would be a self-inflicted economic disaster for American consumers, dealers, and dealership employees.”⁵⁹

Global Automakers (Industry Group Representing International Auto Companies) CEO John Bozzella: “If these reports are true, it’s a bad day for American consumers. The U.S. auto industry is thriving and growing.... To our knowledge, no one is asking for this protection This path leads inevitably to fewer choices and higher prices for cars and trucks in America.”⁶⁰

United Auto Workers President Dennis Williams: “I’m not going to say that I’m 100 percent behind it because I don’t know what all those mechanics are yet.”⁶¹ “It’s time for us to look at this.”⁶²

US Department of Commerce Requests Written Comments and Schedules Public Hearing for Section 232 Investigation of Automobiles and Automotive Parts

On May 25, 2018, the US Department of Commerce (DOC) published a draft Federal Register notice requesting written comments and announcing the public hearing schedule for its investigation into the effects of imports of

⁵⁵ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

⁵⁶ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

⁵⁷ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

⁵⁸ https://www.freep.com/story/money/cars/2018/05/24/sen-corker-slams-trump-threat-auto-tariffs-dangerous/640962002/?utm_source=google&utm_medium=amp&utm_campaign=speakable.

⁵⁹ <https://insidetrade.com/inside-us-trade/commerce-initiates-section-232-investigation-auto-imports>.

⁶⁰ <https://insidetrade.com/inside-us-trade/commerce-initiates-section-232-investigation-auto-imports>.

⁶¹ <https://subscriber.politicopro.com/trade/article/2018/05/trump-takes-aim-at-the-family-car-with-new-tariff-threat-569786>.

⁶² <https://www.wsj.com/articles/trumps-gop-allies-worry-over-possible-new-u-s-auto-tariffs-1527179893>.

automobiles and automotive parts on US national security, pursuant to Section 232 of the Trade Expansion Act of 1962.⁶³ The notice establishes the following deadlines, which confirm that the public input phase of the investigation will proceed rapidly:

- **June 22, 2018** is the due date for filing comments, requests to appear at the public hearing, and summaries of expected testimony at the public hearing;
- **July 6, 2018** is the due date for rebuttal comments submitted in response to any comments filed on or before June 22, 2018; and
- **On July 19 and 20, 2018**, DOC will hold its public hearings on the investigation in Washington, DC.

In addition to the above deadlines, the notice sets forth the suggested criteria for public comments, which are based on the criteria set forth in DOC's regulations for determining the effect of imports on national security and also used in the Section 232 investigations of steel and aluminum. However, also like the steel and aluminum cases, the new notice provides no new information clarifying the scope of products that are subject to the investigation.

We summarize the main elements of the notice below and offer our perspective on them.

Request for written comments and rebuttal comments

DOC is requesting that interested parties submit written comments, data, analyses, or information pertinent to the investigation by June 22, 2018. DOC "is particularly interested" in comments and information directed to the criteria listed in part 705.4 of the National Security Industrial Base Regulations ("NSIBR") as they affect national security, including the following:⁶⁴

- The quantity and nature of imports of automobiles, including cars, SUVs, vans and light trucks, and automotive parts and other circumstances related to the importation of automobiles and automotive parts;
- Domestic production needed for projected national defense requirements;
- Domestic production and productive capacity needed for automobiles and automotive parts to meet projected national defense requirements;
- The existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce automobiles and automotive parts;
- The growth requirements of the automobiles and automotive parts industry to meet national defense requirements and/or requirements to assure such growth, particularly with respect to investment and research and development;
- The impact of foreign competition on the economic welfare of the U.S. automobiles and automotive parts industry;
- The displacement of any domestic automobiles and automotive parts causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects;
- Relevant factors that are causing or will cause a weakening of our national economy;

⁶³ The notice of initiation may be viewed [here](#).

⁶⁴ 15 CFR § 705.4

- The extent to which innovation in new automotive technologies is necessary to meet projected national defense requirements;
- Whether and, if so, how the analysis of the above factors changes when U.S. production by majority U.S.-owned firms is considered separately from U.S. production by majority foreign-owned firms; and
- Any other relevant factors.

Rebuttal comments submitted in response to comments received on or before June 22, 2018 may be filed with DOC no later than July 6, 2018. Comments will be placed in the investigation docket (DOC-2018-0002) and will be open to public inspection, except for business confidential information (BCI). Materials designated as BCI will be exempt from public disclosure as provided for by part 705.6 of the NSIBR. Parties submitting business confidential information must clearly identify the business confidential portion of the submission, file a statement justifying nondisclosure and referring to the specific legal authority claimed, and provide a nonconfidential version of the submission which can be placed in the public file.

Public hearing

DOC will hold a public hearing on July 19 and 20, 2018 in Washington, DC to “further assist the Department in determining whether imports of automobiles and automotive parts threaten to impair the national security and in recommending remedies if such a threat is found to exist.” Interested parties who wish to present their views at the hearing must submit a request to appear at the public hearing and a summary of their expected testimony by June 22, 2018. DOC has requested that public comments at the hearing address the criteria listed in part 705.4 of the NSIBR as they affect national security, as described above.

Scope of the investigation

As noted above, the draft notice describes the products under investigation as “automobiles, including cars, SUVs, vans and light trucks, and automotive parts”, but provides no additional clarification regarding the investigation’s scope. This lack of guidance is a particular concern for automotive parts, which can encompass goods (e.g., LCD screens) that are incorporated in many different manufactured products. Indeed, the title of the investigation and recent agency practice suggest that it will cover most if not all automobiles and automotive parts. This means that the investigation could cover all automobiles classified under subheading 8703 of the Harmonized Tariff Schedule of the United States (HTSUS).⁶⁵ Regarding automotive parts, interested parties may wish to consult the list of parts identified in the US Department of Commerce, International Trade Administration’s (ITA) Automotive Parts Product Listings published in April 2018.⁶⁶ Though unrelated to the Section 232 investigation and produced by ITA for statistical purposes, this document could be a useful starting point for determining the types of automotive parts that may be subject to the investigation.

Outlook

Based on the initiation notice, it appears likely that interested parties will not receive detailed information on the scope of the investigation before public comments and hearing testimony are due. This is consistent with DOC’s recent practice: in the recent steel and aluminum investigations, DOC did not publish the list of specific products covered and the associated HTSUS codes until the end of the investigations, when the product lists were disclosed in DOC’s reports detailing the agency’s findings. Consequently, foreign producers and exporters of all varieties of automobiles and automotive parts may find it worthwhile to provide public comments by the stated deadlines.

⁶⁵ HTSUS subheading 8703 covers “motor cars and other motor vehicles designed to transport people (other than public-transport type), including station wagons and racing cars”.

⁶⁶ Available at <https://www.trade.gov/td/otm/assets/auto/APcodes.pdf>

With respect to such comments, DOC's notice of initiation provides a very short timeframe for interested parties to prepare and submit their input on the investigation: written submissions, requests to appear at the hearing, and summaries of testimony are due in just 24 days, and the public hearing will begin just 27 days thereafter. This timeframe is consistent with – and indeed even shorter than – the timeframes in the 2017 steel and aluminum investigations. Moreover, based on this same recent practice, the aforementioned hearing and public comment period may be the only opportunities for interested parties to provide substantive input on the investigation. Indeed, although DOC in past Section 232 investigations supplemented the initial public comment and hearing processes by also sending surveys to US producers and consumers of the subject merchandise, DOC did not do this in its most recent Section 232 investigations of steel and aluminum. Finally, recent news reports on the investigation indicate that, because it is a priority of President Trump, the case could proceed regardless of the outcome of the ongoing US negotiations on NAFTA or on country exemptions from the steel and aluminum tariffs.

It is therefore critical for interested parties who wish to have their views and data on the record in this investigation begin working now to prepare their written submissions or hearing testimony.

Despite this urgency, DOC might not issue its determination (which is not due until February 17, 2019) until long after the public participation phase of the investigation is concluded. For example, DOC in the recent steel and aluminum cases took almost the full amount of time permitted under the law to issue its determination (i.e., 270 days after the date of initiation), even though the comment and hearing periods were completed in about two months.

White House Issues Statement Regarding Section 301 Investigation of China

On May 29, 2018, the White House released a statement on the status of the US investigation of China's intellectual property policies, pursuant to Section 301 of the Trade Act of 1974.⁶⁷ The statement provided updates on the three actions concerning China-origin products and investment that President Trump's March 22, 2018 Memorandum directed US government agencies to pursue based on the findings of the United States Trade Representative's (USTR) investigation of China's "Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation" under Section 301. Contrary to various media reports, the statement does not implement or guarantee new tariffs or investment restrictions, but remains notable in part because it establishes concrete deadlines for additional details on such measures. As such, the statement represents a modest advancement of the Section 301 investigation, despite the May 19 US-China "framework agreement" to ease bilateral tensions and subsequent statements from Treasury Secretary Mnuchin that the Trump administration has "agreed to put the tariffs on hold while we try to execute the framework." We review the statement and provide an outlook below.

White House Statement on "Steps to Protect Domestic Technology and Intellectual Property from China's Discriminatory and Burdensome Trade Practices"

According to the statement, the President "has been updated on the progress of the announced actions" in the March 22 Memorandum, as follows:

- **Investment restrictions.** According to the statement, the United States "will implement specific investment restrictions and enhanced export controls for Chinese persons and entities related to the acquisition of industrially significant technology" in order "[t]o protect our national security." The statement further notes that "proposed investment restrictions and enhanced export controls will be announced by June 30, 2018," but does not set a deadline for final plans on or implementation of the restrictions, noting only that "they will be implemented shortly thereafter." Prior to this statement, there was no timeframe for the investment proposals,

⁶⁷ Click [here](#) to view the White House statement and [here](#) to view the fact sheet.

with only a progress report from the Treasury Department (which was tasked with devising the plan) due by May 21, 2018.

- **Tariffs.** The statement notes that “the United States will impose a 25 percent tariff on \$50 billion of goods imported from China containing industrially significant technology, including those related to the ‘Made in China 2025’ program,” pursuant to Section 301. USTR announced a preliminary list of such products in early April, followed by a short notice-and-comment period, which ended on May 22. According to the new statement, the “final list of covered imports will be announced by June 15, 2018,” but – as with the aforementioned investment restrictions – the statement does not set a firm deadline for implementation (“tariffs will be imposed on those imports shortly thereafter”). The tariff statement may also note a shift in tariff coverage from the original list, using the qualifier “industrially significant” for the first time.
- **WTO Dispute.** The statement also updates the status of the US WTO dispute (DS542: *China — Certain Measures Concerning the Protection of Intellectual Property Rights*) initiated at the direction of the President: “The United States will continue to pursue litigation at the World Trade Organization for violations of the Agreement on Trade-Related Aspects of Intellectual Property Rights based on China’s discriminatory practices for licensing intellectual property.” The dispute was filed on March 23, 2018 and is now in consultations.

Finally, the statement provided a short update on the Trump administration’s goals in its negotiations with the Chinese government, noting that the United States will pursue the following actions: (1) “continue efforts to protect domestic technology and intellectual property, stop noneconomic transfers of industrially significant technology and intellectual property to China, and enhance access to the Chinese market; (2) “request that China remove all of its many trade barriers, including non-monetary trade barriers, which make it both difficult and unfair to do business there”; and (3) “request that tariffs and taxes between the two countries be reciprocal in nature and value.” The statement provides no details on how the United States expects to achieve these objectives or the timeframe for doing so.

Outlook

As noted above, the White House statement is notable in that it sets new, firm deadlines for both the investment restriction proposal (June 30) and the final tariff list (June 15). However, these deadlines could be missed – a White House statement is not binding – and there remains no deadline for the actual implementation of the tariff/investment measures. Nevertheless, the statement represents a modest advancement in the Section 301 investigation and was thus met with “surprise” from the Chinese government (who viewed the “strategic statement” as “obviously against the consensus reached by the U.S. and China in Washington recently”) and most US observers for similar reasons. It also supports our view that, despite mixed messages from the White House on Section 301 tariffs and some possible delay, the measures will more likely than not be implemented sometime this year. However, it appears that the additional tariffs that the administration threatened on another USD 100 billion in Chinese goods have been shelved for now.

The motivations behind the statement are unclear, but it appears most likely intended to increase US leverage in upcoming bilateral negotiations in China – Commerce Secretary Wilbur Ross will visit China from June 2 to June 4 to advance the May 19 “framework agreement.” The Chinese government’s description of the statement as “strategic” reinforces that view. However, the statement might also be an attempt to counter recent criticism that the Trump administration has “gone soft” on China, due in particular to the framework agreement and the administration’s alleged retreat with respect to China’s ZTE. Indeed, the statement was accompanied by a “fact sheet” trumpeting the various ways that the Trump administration has confronted “China’s unfair trade policies.”

President Trump Signs Proclamations Modifying Section 232 Measures, Allows Exemptions to Expire for Canada, Mexico, and the European Union

On May 31, 2018, President Trump signed Proclamations implementing the following modifications to the tariff measures imposed by the United States on imports of steel and aluminum articles pursuant to Section 232 of the Trade Expansion Act of 1962:

- All steel articles from Argentina, Australia and Brazil will remain exempt from the applicable Section 232 tariffs on a long-term basis; however, imports of such articles from Argentina and Brazil will be subject to annual quotas retroactive to January 1, 2018; and
- All aluminum articles from Argentina and Australia will remain exempt from the applicable Section 232 tariffs on a long-term basis; however, imports of such articles from Argentina will be subject to annual quotas retroactive to January 1, 2018.

The Proclamations do not extend the tariff exemptions previously granted to imports of steel and aluminum articles from Canada, Mexico, or the member countries of the European Union (EU), which are scheduled to expire at 12:01 a.m. eastern daylight time on June 1, 2018. Imports of the covered articles from these countries will therefore be subject to the 25 percent additional duty on steel imports and the 10 percent additional duty on aluminum imports as of June 1, 2018. In addition, the aluminum Proclamation terminates the indefinite exemption previously granted to imports of the covered aluminum articles from Brazil, which therefore will be subject to the 10 percent additional duty on aluminum imports as of June 1, 2018.

We summarize the two Proclamations below and offer our perspective on them.

Proclamation Adjusting Imports of Steel into the United States

Argentina, Australia, and Brazil

The steel Proclamation states that the United States “has agreed on a range of measures” with Argentina, Australia, and Brazil, including measures to reduce excess steel production and excess capacity, increase capacity utilization in the United States, prevent transshipment, and avoid import surges. The President therefore has determined “that steel articles imports from these countries will no longer threaten to impair the national security” and thus has decided to exclude them from the Section 232 tariff “on a long-term basis”.

The Proclamation further states that imports of the covered steel articles from Argentina and Brazil will be subject to quantitative limitations (i.e., quotas), which are set forth in Annex to the Proclamation that is not yet publicly available. US Customs and Border Protection (CBP) also has not yet released the details of the quota arrangements. However, the Proclamation indicates that the quotas for Argentina and Brazil will (1) be product-specific, with a separate quantitative limitation for each of the 54 categories of steel products identified in HTSUS subheadings 9903.80.05 through 9903.80.58; and (2) take into account all steel articles imports from each respective country since January 1, 2018. This approach is consistent with the Section 232 quotas now in place for steel articles from South Korea, which were announced last month.

The Proclamation further specifies that, beginning on July 1, 2018, imports under a particular steel product category from a particular quota country during any one quarter in any year (January through March, April through June, July through September, or October through December) will not be permitted to exceed 500,000 kg (equivalent to 500 metric tons) and 30 percent of the total aggregate quantity provided for a calendar year for such country. This indicates that a country will be permitted to export more than 30 percent of its total annual quota volume during a particular quarter, provided that the total volume of such exports is less than 500,000 kg (a relatively small amount).

The Proclamation states that the quantitative limitations apply only to goods entered for consumption or withdrawn from warehouse for consumption on the listed dates. This implies that the same customs treatment applied to the South Korean products subject to quantitative limitations will now apply to the additional products subject to quantitative limitations, and similarly, the same customs treatment applied to goods from non-exempt countries subject to the tariff will now apply to goods from those countries no longer exempt from the tariff.

The Proclamation does not implement or mention any quota arrangement for Australia, indicating that the Trump administration has decided to grant Australia a long-term exemption without any quantitative limitations.

Canada, Mexico, and the EU

The Proclamation does not extend the temporary exemptions previously granted to imports of the covered steel articles from Canada, Mexico, and the member countries of the EU. Therefore, pursuant to Proclamation 9740 of April 30, 2018, imports of the covered steel articles from Canada, Mexico, and the member countries of the EU will be subject to the Section 232 tariffs as of 12:01 a.m. eastern daylight time on June 1, 2018.

Proclamation Adjusting Imports of Aluminum into the United States

Argentina and Australia

The Proclamation states that the United States “has agreed on a range of measures” with Argentina and Australia, including measures to reduce aluminum production and excess capacity, increase capacity utilization in the United States, prevent transshipment, and avoid import surges. The President therefore has determined that aluminum articles imports from these countries will no longer threaten to impair the national security, and thus has decided to exclude these countries from Section 232 tariff “on a long-term basis”.

The Proclamation further states that imports of the covered aluminum articles from Argentina will be subject to quantitative limitations (i.e., quotas), which are set forth in Annex to the Proclamation that is not yet publicly available. The quantitative limitations for calendar year 2018 will take into account all aluminum articles imports from Argentina since January 1, 2018. Like the steel Proclamation, the aluminum Proclamation states that the quantitative limitations apply only to goods entered for consumption or withdrawn from warehouse for consumption on the listed dates.

The Proclamation does not implement or mention any quota arrangement for Australia, indicating that the Trump administration has decided to grant Australia a long-term exemption without any quantitative limitations.

Canada, Mexico, the EU, and Brazil

The Proclamation does not extend the temporary exemptions previously granted to imports of the covered steel articles from Canada, Mexico, and the member countries of the EU, and it terminates the indefinite exemption previously granted to Brazil by Proclamation 9740 of April 30, 2018. The Proclamation provides that, on or after 12:01 a.m. eastern daylight time on June 1, 2018, the Section 232 tariff will apply to imports of the covered aluminum articles from all countries except Argentina and Australia.

Outlook

The Federal Register notice containing the Annexes to the Proclamations (and thus, the details of the new quota arrangements with Argentina and Brazil) likely will not be available for several business days. However, CBP will likely publish new Quota Bulletins in the next business day or two, containing details and instructions regarding these quota arrangements, including the annual quota volumes.

The Trump administration's decision to apply the Section 232 tariffs to imports from Canada, Mexico, and the EU already has been widely criticized by congressional Republicans, including the Chairs of the House Ways and Means and Senate Finance Committees, and immediately prompted threats of retaliation against US exports by the governments of all three jurisdictions. It is expected that Canada and Mexico will soon submit notifications to the World Trade Organization detailing their plans to retaliate against US exports pursuant to Article 12.5 of the Agreement on Safeguards, joining several other governments (namely those of China, the EU, India, Japan, Turkey, and Russia) that have already done so. Though the Trump administration has indicated that it is willing to continue negotiating with Canada, Mexico, and the EU regarding potential Section 232 exemptions, the outlook for such negotiations does not appear promising, given the immediate reactions to the tariff decision and the apparent linkage between the tariffs and other contentious issues, such as the NAFTA negotiations. It appears, therefore, that the Section 232 tariffs on steel and aluminum imports from Canada, Mexico, and the EU will remain in effect for the foreseeable future.

Click [here](#) to view the steel Proclamation and [here](#) to view the aluminum Proclamation.

Petitions and Investigations Highlights

US Department of Commerce Issues Affirmative Preliminary Determinations in Anti-Dumping Investigations of PET Resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan

On April 30, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the anti-dumping duty (AD) investigations concerning imports of polyethylene terephthalate (PET) resin from Brazil, the Republic of Indonesia (Indonesia), the Republic of Korea (Korea), Pakistan, and Taiwan.⁶⁸ In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Preliminary Dumping Margin
Brazil	24.09 to 226.91 percent
Indonesia	13.16 percent
Korea	8.81 to 101.41 percent
Pakistan	7.75 percent
Taiwan	9.02 to 11.89 percent

The merchandise covered by these investigations is PET resin having an intrinsic viscosity of at least 70, but not more than 88, milliliters per gram (0.70 to 0.88 deciliters per gram). The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to these investigations is classified under subheadings 3907.61.0000 and 3907.69.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).

DOC is scheduled to announce its final determinations on or around September 17, 2018. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan materially injure, or threaten material injury to, the domestic industry, DOC will issue AD orders. If either agency issues negative final determinations, no AD orders will be issued.

According to DOC, imports of PET resin from Brazil, Indonesia, Korea, Pakistan, and Taiwan in 2016 were valued at an estimated USD 51.7 million, 35.7 million, 24 million, 34.1 million, and 109.8 million, respectively.

US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping and Countervailing Duty Investigations of Carbon and Certain Alloy Steel Wire Rod from Italy, Korea, Spain, Turkey, and the United Kingdom

On May 1, 2018, the US International Trade Commission (USITC) determined that a US industry is materially injured by reason of imports of carbon and certain alloy steel wire rod from Italy, Korea, Spain, Turkey, and the United Kingdom that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value and subsidized by the governments of Italy and Turkey.⁶⁹ As a result of the USITC's affirmative determinations,

⁶⁸ Click [here](#) to view the DOC fact sheet on the investigations.

⁶⁹ Click [here](#) to view the ITC's announcement on the investigation.

DOC will issue anti-dumping duty orders on imports of the subject merchandise from Italy, Korea, Spain, Turkey, and the United Kingdom, and countervailing duty orders on imports of the subject merchandise from Italy and Turkey.

The ITC also made a negative finding concerning critical circumstances with regard to imports of the subject merchandise from Spain, Turkey, and the United Kingdom. As a result, imports of the subject merchandise from Spain and the United Kingdom will not be subject to retroactive anti-dumping duties, and imports of the subject merchandise from Turkey will not be subject to retroactive countervailing duties.

Imports of the subject merchandise are currently classifiable under subheadings 7213.91.3011, 7213.91.3015, 7213.91.3020, 7213.91.3093, 7213.91.4500, 7213.91.6000, 7213.99.0030, 7227.20.0030, 7227.20.0080, 7227.90.6010, 7227.90.6020, 7227.90.6030, and 7227.90.6035 of the Harmonized Tariff Schedule of the United States (HTSUS), and may also enter under HTSUS subheadings 7213.99.0090 and 7227.90.6090.

According to the ITC, imports of the subject merchandise from Italy, Korea, Spain, Turkey, and the United Kingdom were valued at USD 176 million in 2016. The ITC's public report on the investigations will be published by June 1, 2018.

US Department of Commerce Issues Affirmative Preliminary Determinations in Anti-Dumping Duty Investigations of Forged Steel Fittings from China, Italy, and Taiwan

On May 14, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determinations in the anti-dumping duty (AD) investigations concerning imports of forged steel fittings from China, Italy, and Taiwan.⁷⁰ In its investigations, DOC preliminarily determined that imports of the subject merchandise were sold in the United States at the following dumping margins:

Country	Dumping Margin
China	7.42 to 142.72 percent
Italy	49.43 to 80.20 percent
Taiwan	116.17 percent

The merchandise covered by these investigations is carbon and alloy forged steel fittings, whether unfinished (commonly known as blanks or rough forgings) or finished. Such fittings are made in a variety of shapes including, but not limited to, elbows, tees, crosses, laterals, couplings, reducers, caps, plugs, bushings, unions, and outlets. Forged steel fittings are covered regardless of end finish, whether threaded, socket-weld or other end connections. Subject carbon and alloy forged steel fittings are normally entered under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7307.99.1000, 7307.99.3000, 7307.99.5045, and 7307.99.5060. They also may be entered under HTSUS subheadings 7307.92.3010, 7307.92.3030, 7307.92.9000, and 7326.19.0010.

DOC is scheduled to announce its final determination with respect to Taiwan on July 24, 2018, and its final determinations with respect to China and Italy on or around September 25, 2018. If DOC makes affirmative final determinations, and the US International Trade Commission (ITC) makes affirmative final determinations that imports of forged steel fittings from China, Italy, and Taiwan materially injure, or threaten material injury to, the domestic industry, DOC will issue AD orders.

If either agency issues negative final determinations, no AD orders will be issued.

⁷⁰ Click [here](#) to view the DOC fact sheet on the investigations.

According to DOC, imports of the subject merchandise from China, Italy, and Taiwan in 2016 were valued at an estimated USD 78.4 million, 21.1 million, and 15.1 million, respectively.

US Department of Commerce Issues Affirmative Preliminary Determination in Countervailing Duty Investigation of Sodium Gluconate, Gluconic Acid, and Derivative Products from China

On May 14, 2018, the US Department of Commerce (DOC) announced its affirmative preliminary determination in the countervailing duty (CVD) investigation concerning imports of sodium gluconate, gluconic acid, and derivative products from China.⁷¹ In its investigation, DOC preliminarily determined that imports of the subject merchandise from China received countervailable subsidies of 194.67 percent.

The products covered by this investigation are all grades of sodium gluconate, gluconic acid, liquid gluconate, and glucono delta lactone (GDL) (collectively GNA Products), regardless of physical form (including, but not limited to substrates; solutions; dry granular form or powders, regardless of particle size; or as a slurry). The scope also includes GNA Products that have been blended or are in solution with other product(s) where the resulting mix contains 35 percent or more of sodium gluconate, gluconic acid, liquid gluconate, and/or GDL by dry weight. The merchandise covered by the scope of this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 2918.16.1000, 2918.16.5010, and 2932.20.5020. Merchandise covered by the scope may also enter under HTSUS subheadings 2918.16.5050, 3824.99.2890, and 3824.99.9295.

DOC is scheduled to announce its final determination on or around September 17, 2018. If DOC makes an affirmative final determination, and the US International Trade Commission (ITC) makes an affirmative final determination that imports of sodium gluconate, gluconic acid, and derivative products from China materially injure, or threaten material injury to, the domestic industry, DOC will issue a CVD order. If either agency's final determination is negative, no CVD order will be issued.

According to DOC, imports of the subject merchandise from China were valued at an estimated USD 4.4 million in 2016.

US International Trade Commission Issues Affirmative Final Determination in Countervailing Duty Investigation of Stainless Steel Flanges from China

On May 11, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of stainless steel flanges from China that the US Department of Commerce (DOC) has determined are subsidized by the Government of China.⁷² As a result of the ITC's affirmative determination, DOC will issue a countervailing duty order on imports of the subject merchandise from China. DOC in April 2018 determined that imports of the subject merchandise from China received countervailable subsidies of 174.73 percent.

The merchandise subject to the investigation is typically imported under headings 7307.21.1000 and 7307.21.5000 of the Harmonized Tariff Schedule of the United States (HTSUS). According to DOC, imports of stainless steel flanges from China in 2016 were valued at an estimated USD 16.3 million.

The ITC's public report on the investigation will be published by June 19, 2018.

⁷¹ Click [here](#) to view the DOC fact sheet on the investigations.

⁷² Click [here](#) to view the ITC's press release on the investigation.

US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping Duty Investigations of Tool Chests and Cabinets from China and Vietnam

On May 11, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured or threatened with material injury by reason of imports of tool chests from China and Vietnam that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.⁷³ As a result of the ITC's affirmative determinations, DOC will issue anti-dumping duty orders on imports of the subject merchandise from China and Vietnam. DOC in April 2018 determined that imports of the subject merchandise were sold in the United States at dumping margins of 97.11 to 244.29 percent (for China) and 327.17 percent (for Vietnam).

Merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 9403.20.0021, 9403.20.0026, 9403.20.0030, 9403.20.0080, 9403.20.0090, and 7326.90.8688, but may also be classified under subheading 7326.90.3500. According to DOC, imports of tool chests and cabinets from China and Vietnam in 2016 were valued at an estimated USD 230 million and 77 million, respectively.

The ITC's public report on the investigation will be published by June 1, 2018.

US International Trade Commission Issues Affirmative Final Determinations in Anti-Dumping Duty Investigations of Cold-Drawn Mechanical Tubing from China, Germany, India, Italy, Korea and Switzerland

On May 17, 2018, the US International Trade Commission (ITC) determined that a US industry is materially injured by reason of imports of cold-drawn mechanical tubing from China, Germany, India, Italy, Korea, and Switzerland that the US Department of Commerce (DOC) has determined are sold in the United States at less than fair value.⁷⁴ As a result of the ITC's affirmative determinations, DOC will issue anti-dumping duty orders on imports of this product from China, Germany, India, Italy, Korea, and Switzerland.

The ITC also made negative findings concerning critical circumstances with regard to imports of cold-drawn mechanical tubing from China, Italy, and Korea. As a result, imports of this product from China, Italy, and Korea will not be subject to retroactive anti-dumping duties.

The products subject to these investigations are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7304.31.3000, 7304.31.6050, 7304.51.1000, 7304.51.5005, 7304.51.5060, 7306.30.5015, 7306.30.5020, and 7306.50.5030. Subject merchandise may also enter under numbers 7306.30.1000 and 7306.50.1000. According to DOC, imports of cold-drawn mechanical tubing from China, Germany, India, Italy, Korea, and Switzerland were valued at an estimated USD 29.4, 38.8, 25.0, 11.9, 21.3, and 26.2 million, respectively, in 2016.

The ITC will publish its report on the investigation by June 16, 2018.

US Department of Commerce Initiates Anti-Dumping and Countervailing Duty Investigations of Certain Quartz Surface Products from China

On May 14, 2018, the US Department of Commerce (DOC) announced the initiation of anti-dumping (AD) and countervailing duty (CVD) investigations concerning imports of certain quartz surface products from China.⁷⁵ The petitioner in these investigations alleges that imports of certain quartz surface products from China were sold in the

⁷³ Click [here](#) to view the ITC's press release on the investigation.

⁷⁴ Click [here](#) to view the ITC's press release on the investigation.

⁷⁵ Click [here](#) to view the DOC fact sheet on the investigation.

United States at dumping margins ranging from 303.38 to 336.69 percent and received countervailable subsidies in excess of *de minimis* levels.

The merchandise covered by these investigations is certain quartz surface products. Quartz surface products consist of slabs and other surfaces created from a mixture of materials that includes predominately silica (e.g., quartz, quartz powder, cristobalite) as well as a resin binder (e.g., an unsaturated polyester). The incorporation of other materials, including, but not limited to, pigments, cement, or other additives does not remove the merchandise from the scope of the investigations. However, the scope of the investigations only includes products where the silica content is greater than any other single material, by actual weight.

Quartz surface products are typically sold as rectangular slabs with a total surface area of approximately 45 to 60 square feet and a nominal thickness of one, two, or three centimeters. However, the scope of this investigation includes surface products of all other sizes, thicknesses, and shapes. The products subject to the scope are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 6810.99.0010. Subject merchandise may also enter under subheadings 6810.11.0010, 6810.11.0070, 6810.19.1200, 6810.19.1400, 6810.19.5000, 6810.91.0000, 6810.99.0080, 6815.99.4070, 2506.10.0010, 2506.10.0050, 2506.20.0010, and 2506.20.0080.

The US International Trade Commission (ITC) is scheduled to make its preliminary injury determinations on or before June 1, 2018. If the ITC determines that there is a reasonable indication that imports of certain quartz surface products from China materially injure, or threaten material injury to, the domestic industry in the United States, the investigations will continue, and DOC will be scheduled to announce its preliminary CVD determination in July 2018 and its preliminary AD determination in September 2018, although these dates may be extended. If the ITC's determinations are negative, the investigations will be terminated.

According to DOC, imports of certain certain quartz surface products from China in 2017 were valued at an estimated USD 459.6 million.

Multilateral Highlights

US Trading Partners Respond to Section 232 Tariff Actions

On May 31, 2018 the Trump administration announced that it will no longer exempt steel and aluminum imports from Canada, Mexico, and the European Union (EU) from the tariffs the United States imposed on such products earlier this year, pursuant to Section 232 of the Trade Expansion Act of 1962.

The Trump administration's Section 232 decision elicited an instant response from these close US allies and trading partners. The precise nature of the Canadian, Mexican and European responses vary, but all involve retaliation against American exports in the form of new tariffs. The retaliation joins similar action (or threats of action) by other US trading partners that had not been exempt from the Section 232 tariffs. All current retaliatory measures are summarized in the following chart, which is based on official World Trade Organization (WTO) filings, government statements and published reports.

Country	Tariff Rates	Products Targeted	Annual US Export Value (Millions USD)	Annual Tariff Value (Millions USD)	Effective Date	Source
China	15% - 25%	See Notification	\$2,750.00	\$611.45	In effect as of 2-Apr-18	WTO Article 12.5 Notification
EU (Annex 1)	25%	See Notification	\$3,200.00	\$700.00	20-Jun-18	WTO Article 12.5 Notification Press Release
EU (Annex 2)	10% - 50%	See Notification	\$3,800.00	\$800.00	23-Mar-21	WTO Article 12.5 Notification Press Release
India	5% - 100%	See Notification	\$10,006.00	\$800.10	21-Jun-18	WTO Article 12.5 Notification
Japan	N/A	N/A	\$1,910.51	\$439.94	18-Jun-18	WTO Article 12.5 Notification
Turkey	5% - 40%	See Notification	\$1,784.74	\$266.54	21-Jun-18	WTO Article 12.5 Notification
Russia	N/A	N/A	\$3,158.10	\$537.60	18-Jun-18	WTO Article 12.5 Notification
Canada	10% - 25%	See Notice	\$12,789.35	\$1,966.32*	1-Jul-18	Official Notice of Intent
Mexico	N/A	See Official Announcement	N/A	\$646.12*	N/A	Official Announcement
TOTAL			\$39,398.70	\$6,768.07		

*Estimate based on the government's stated intention to implement tariffs equal to the Section 232 tariffs imposed by the United States, *i.e.*, 25% and 10% tariffs on U.S. imports of steel and aluminum, respectively, from the country at issue in 2017.

Most of these tariffs have not yet been implemented and will not immediately take effect due to both domestic legal procedures and applicable WTO rules. Nevertheless, if each of the aforementioned eight WTO Members carries out its current retaliation threats against the United States, the total annual value of affected US exports and tariffs would reach approximately \$39.4 billion and 6.8 billion, respectively. It also remains to be seen whether other WTO Members join this group, thus further affecting US export interests and the global trading system.