

US & Multilateral Trade Policy Developments

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US General Trade Policy

USTR Announces Intention to Terminate GSP Benefits for India and Turkey

On March 4, 2019, the Office of the US Trade Representative (USTR) announced that the United States intends to terminate India's and Turkey's designations as beneficiary developing countries (BDCs) under the US Generalized System of Preferences (GSP) program because the two countries "no longer comply with the statutory eligibility criteria." USTR stated that it intends to terminate India's BDC status based on the country's alleged failure to provide "equitable and reasonable" market access in numerous sectors, and that it intends to terminate Turkey's BDC status because the country is "sufficiently economically developed" and should no longer benefit from preferential access to the US market. The termination of each country's BDC status will be implemented by Presidential Proclamation at a later date, but could occur in as little as 60 days (*i.e.*, on or after May 3, 2019). We discuss these actions in greater detail below.

India

The United States is terminating India's status as a BDC based on the country's alleged failure to comply with the statutory eligibility criterion on market access. This criterion (set forth at 19 USC § 2462(c)(4)) provides that the President, when assessing a country's GSP eligibility, shall take into account "the extent to which such country has assured the United States that it will provide equitable and reasonable access to the markets and basic commodity resources of such country[.]"

USTR in April 2018 self-initiated a review of India's GSP eligibility "based on concerns related to its compliance with the GSP market access criterion", alleging that "India has implemented a wide array of trade barriers that create serious negative effects on U.S. commerce." USTR simultaneously accepted two petitions related to the same criterion. The petitions, filed by the US dairy industry and the US medical device industry, requested a review of India's GSP benefits given alleged Indian trade barriers affecting US exports in those sectors.

USTR's March 5 announcement states that "[d]espite intensive engagement, India has failed to take the necessary steps to meet the GSP criterion", but does not elaborate. In its discussions with India, the United States sought to address the concerns raised by the US dairy and medical device industries and other issues, including market access for other agricultural products (*e.g.*, alfalfa, cherries, and pork), testing and conformity assessment procedures in the telecommunications sector, and India's tariffs on information and communications technology goods.

Under the GSP statute, the termination of India's GSP benefits cannot take effect for at least 60 days. As USTR's statement acknowledges, the law provides that the President shall not terminate a country's BDC designation unless, at least 60 days before such termination, "the President has notified the Congress and has notified such country of the President's intention to terminate such designation".¹ The Trump administration reportedly provided the required notifications on March 4 (meaning that the termination may take effect on or after May 3, 2019), but the notifications have not been made public. USTR's statement indicates that President Trump will issue a Proclamation at a later date to effectuate the termination.

India has not yet announced any plans to retaliate against the United States over its decision to terminate India's GSP benefits. Notably, however, India over the past year has repeatedly delayed imposing retaliatory tariffs on US goods in response to the United States' imposition of tariffs on Indian steel and aluminum under Section 232 of the Trade Expansion Act. India in June 2018 proposed retaliatory tariffs on 29 categories of US goods valued at approximately USD \$235 million, but has repeatedly postponed their imposition owing to the ongoing bilateral discussions with the United States. The US action on GSP may lead India to finally impose such tariffs after April 1, 2019 (the date on which they are currently scheduled to take effect), or to take other responsive actions.

India was the largest user of the GSP program in 2017 (the last year for which full-year data are available). India's exports to the United States under GSP were valued at \$5.69 billion that year. Chemicals accounted for the largest

¹ 19 USC § 2462(f)(2).

share (approximately 20%) of India's exports under GSP, followed by fabricated metal products, transportation equipment, electrical equipment, and primary metals.

Turkey

USTR in August 2018 self-initiated a review of Turkey's GSP eligibility "based on concerns related to its compliance with the GSP market access criterion", and in response to the retaliatory tariffs Turkey imposed on US goods following the United States' imposition of Section 232 tariffs on steel and aluminum from Turkey. However, USTR appears to be terminating Turkey's BDC status based on a different eligibility criterion relating to the country's level of economic development.

USTR's announcement states that it is terminating Turkey's status as a BDC based on "a finding that it is sufficiently economically developed and should no longer benefit from preferential market access to the United States market." USTR states that "[t]he United States designated Turkey as a GSP beneficiary developing country in 1975. An increase in Gross National Income (GNI) per capita, declining poverty rates, and export diversification, by trading partner and by sector, are evidence of Turkey's higher level of economic development." The statement provides no further details about the rationale or statutory basis for revoking Turkey's BDC status, though it suggests that the administration may cite the eligibility criterion at 19 USC § 2462(c)(2): "the President shall take into account...the level of economic development of such country, including its per capita gross national product, the living standards of its inhabitants, and any other economic factors which the President deems appropriate[.]"² It is therefore possible that the Trump administration will terminate Turkey's BDC status by Presidential Proclamation in as little as 60 days (*i.e.*, on or after May 3, 2019).

Turkey was the fifth-largest GSP user in 2017, with exports under the program valued at \$1.66 billion. Transportation equipment accounted for the largest share (16%) of Turkey's exports under GSP, followed by "food and kindred products", miscellaneous manufactured commodities, non-metallic minerals, and plastics and rubber products.

Outlook

The Trump administration's decision to terminate GSP benefits for India and Turkey – two of the largest users of the GSP program – is an important development that reflects the administration's stated emphasis on trade enforcement, its demands for greater "reciprocity" in trade relations (particularly with large and advanced developing countries), and its willingness to curtail access to the US market in an effort to gain "leverage" in discussions with trading partners. The administration's actions with respect to India and Turkey also are particularly noteworthy given that eligibility reviews of other major GSP beneficiaries (*e.g.*, Indonesia) remain ongoing. Moreover, USTR has stated that its new GSP "assessment process", which it launched in 2017 to evaluate the eligibility of each BDC on a triennial basis, will continue this year with a focus on BDCs in Europe and the Western Hemisphere. Thus, the initiation of additional GSP reviews this year cannot be ruled out.

USTR's announcement can be viewed [here](#).

US Department of Commerce Initiates Section 232 Investigation of Titanium Sponge Imports

On March 4, 2019, the US Department of Commerce ("DOC") initiated an investigation pursuant to Section 232 of the Trade Expansion Act of 1962 ("Section 232") to determine whether titanium sponge is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security of the United

² Another provision of the GSP statute, 19 USC § 2462(e) ("Mandatory Graduation of Beneficiary Developing Countries") requires the President to terminate a country's BDC status upon determining that the country "has become a 'high income' country, as defined by the official statistics of the International Bank for Reconstruction and Development", effective on January 1 of the second year following the year in which such determination is made. However, USTR's statement makes no reference to this provision.

States. DOC initiated the investigation in response to a petition filed by a domestic producer, Titanium Metals Corporation (TIMET), on September 27, 2018. 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 titanium sponge into the United States.

DOC has not yet issued its Federal Register notice announcing the process and schedule for interested parties to participate in the investigation. However, it is expected that DOC will do so in the coming days, and that written submissions will be due relatively soon after initiation, consistent with the Trump administration's practice in prior Section 232 investigations. The administration already has used Section 232 to impose tariffs and quotas on a broad range of steel and aluminum imports into the United States, and it is currently considering additional Section 232 actions on imports of automotive goods and uranium. Secretary of Commerce Wilbur Ross stated upon initiating the new investigation that "[t]itanium sponge has uses in a wide range of defense applications, from helicopter blades and tank armor to fighter jet airframes and engines", and that "[t]he Department of Commerce's Bureau of Industry and Security will conduct a thorough, fair, and transparent investigation before we make a recommendation to the President."

This report summarizes the legal framework for Section 232, the Trump administration's recent actions under the law, and the prospects for the new Section 232 investigation of titanium sponge imports.

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.³ The Bureau of Industry and Security ("BIS"), within DOC, conducts the Section 232 investigation. BIS determines whether an article "is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security[.]"⁴

BIS must conclude its investigation no later than 270 days after initiation. If BIS finds in the affirmative, the President must, within 90 days: (1) determine whether he concurs with the finding; and, if he concurs (2) "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."⁵ 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 US 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 I to this report provides a detailed overview of the action items for a Section 232 investigation and their respective timeframes.

Recent Section 232 Investigations

As noted above, the Trump administration already has utilized Section 232 to impose broad tariffs on imports of steel and aluminum, and is currently considering Section 232 actions on automotive goods and uranium. We summarize these actions below.

³ 19 U.S.C. § 1862(b)(1)(A).

⁴ 19 U.S.C. § 1862(b)(3)(A).

⁵ 19 U.S.C. § 1862(c)(1)(A).

- **Steel and Aluminum.** Secretary Ross initiated Section 232 investigations of steel and aluminum imports in April 2017 at the direction of the President. In the investigations, DOC determined 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. In the ensuing months, President Trump issued several additional Proclamations modifying the country coverage of the measures. Among other things, these Proclamations exempted certain countries from the Section 232 tariffs but imposed quotas on their exports of the subject products to the United States, reflecting agreements negotiated bilaterally with each country. Such exemptions are currently in effect for imports from Argentina (steel and aluminum), Brazil (steel), and Korea (steel). Australia also was granted an exemption for its steel and aluminum exports, which are not subject to any quotas under Section 232.

In addition, pursuant to the Presidential Proclamations, 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. To date, DOC has received more than 51,000 exclusion requests, but has granted only 19,460 and has denied 6,998 such requests. A wide range of US business groups and Members of Congress have complained about the onerous and technical nature of the product exclusion process.

- **Automotive goods.** On May 23, 2018, Secretary Ross initiated a Section 232 investigation of automotive goods at the direction of the President. On February 17, 2019, DOC submitted its report to the President on the results of its investigation; however, the report has not yet been published. According to industry sources, the report, which had undergone multiple revisions and interagency reviews, finds a national security threat and offers three different recommendations for the President: (1) blanket tariffs on autos and auto parts ranging from 20 –25 percent; (2) narrowly tailored tariffs on certain vehicle technologies; and (3) a middle ground option between the first two options. The release of the report and the President’s decision to take action could depend on the status of ongoing US trade negotiations with Japan and the EU, the initiation of which paused the United States’ imposition of any new tariffs. Canada and Mexico, meanwhile, negotiated a substantial exception from any future Section 232 tariffs on their automotive exports through the US-Mexico-Canada Agreement.
- **Uranium.** The Section 232 investigation of uranium was initiated on July 18, 2018 in response to a petition filed by domestic producers, and the final report is due by April 22, 2019 (unless tolled). BIS has reportedly conducted site visits and issued surveys to various US stakeholders. The outcome of the investigation is unclear, complicated by the unique nature of the product, the lack of viable near-term domestic supplies, and the end-2019 expiration of US legal measures (*e.g.*, Agreement Suspending the Antidumping Investigation on Uranium From the Russian Federation of 1992) that already restrict imports of uranium from Russia, one of the world’s largest producers.

Outlook for the Section 232 Investigation of Titanium Sponge

DOC is expected to issue a Federal Register notice in the next one to two weeks outlining the schedule for public participation in the titanium sponge investigation. Written submissions will likely be due relatively soon after initiation. DOC may also hold a public hearing on the investigation, but it is not required to do so, and it has not done

so in the ongoing investigation of uranium. In addition, DOC may issue questionnaires to interested parties, but it is not required to do so (questionnaires were issued in the automotive investigation and reportedly in the uranium investigation, but they were not issued in the steel and aluminum investigations).

DOC's initial statement on the titanium sponge investigation does not provide detailed information on its scope (*i.e.*, the specific Harmonized Tariff Scheduled of the United States ("HTSUS") subheadings that are subject to the investigation). 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.⁶ However, recent trade remedy investigations of titanium sponge have covered imports under HTSUS subheading 8108.20.0010. The five largest exporters of such products to the United States are shown in the table below. Japan is by far the largest exporter of such products to the United States, followed by Kazakhstan.

US Imports of Titanium Sponge Under HTSUS Subheading 8108.20.0010

Country	Imports (USD)		
	2017	YTD 2017 (Jan-Nov)	YTD 2018 (Jan-Nov)
Japan	\$ 177,679,268	\$ 163,855,292	\$ 186,668,510
Kazakhstan	\$ 15,947,027	\$ 15,024,468	\$ 12,551,190
Ukraine	\$ 11,711,858	\$ 10,365,620	\$ 311,330
Russia	\$ 1,088,000	\$ 1,088,000	\$ 105,880
Taiwan	\$ 965,580	\$ 965,580	\$ -

Source: USITC Dataweb

The outcome of the new Section 232 investigation of titanium sponge is unclear. Though the Trump administration made affirmative findings in its Section 232 investigations of steel and aluminum and reportedly has done the same in the automotive investigation, those cases differ from the new investigation of titanium sponge in important ways. Notably, while the steel, aluminum, and automotive investigations were "self-initiated" by the Secretary of Commerce at the direction of the President, the new investigation of titanium sponge (like the ongoing uranium investigation) was initiated in response to a petition from a US domestic producer. DOC under the Trump administration has yet to complete a Section 232 investigation that was initiated in response to a petition.

Moreover, the prior investigations under the Trump administration indicate that the timing of any potential action by the President under Section 232 is difficult to predict. It had initially been reported that President Trump wished to issue his proclamations in the steel and aluminum investigations by the summer of 2017, but they in fact came in the spring of 2018. Similarly, it had been reported that President Trump wished to issue a proclamation in the automotive investigation prior to the November 2018 US elections, but DOC's report was not submitted until February 2019.

Nevertheless, the opening of a Section 232 investigation is clearly an important development for producers, exporters, importers, and consumers of titanium sponge products. 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.

DOC's announcement on the new investigation is available [here](#).

⁶ 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 DOC released its reports on its findings in the investigations. DOC also has not published detailed information on the scope of the automotive or uranium investigations.

Annex I: 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. ⁷	In the last Section 232 investigation initiated by petition (<i>Uranium</i>), DOC initiated the investigation 182 days after receiving the petition.
Public comment period	Approximately 1-2 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. ⁸ 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. ⁹	In the Section 232 investigations of steel and aluminum, DOC published FR notices within two weeks after the date of initiation to request public comments on the investigation. Parties were given 31 days (for steel) and 51 days (for aluminum) to submit comments. In the automotive investigation, DOC published the FR notice one week after initiation. Parties were given 23 days to submit comments and 37 days to submit rebuttal comments (though these deadlines were later extended by one week). In the uranium investigation, DOC published the FR notice one week after initiation, and parties were given 47 days to submit comments (though this deadline was later extended by 15 days).
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[.]" ¹⁰ A notice of the hearing shall be published in the Federal Register. ¹¹	In the steel and aluminum investigations, hearings were held 35 days after initiation (for steel) and 57 days after initiation (for aluminum). In the automotive investigation, the hearing was held 57 days after initiation . DOC has not held a public hearing in the uranium investigation.
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." ¹²	In the steel and aluminum investigations, DOC did not send questionnaires. In the automotive investigation, DOC sent questionnaires to certain interested parties in July 2018 (approximately two months after initiation).

⁷ 19 U.S.C. § 1862(b)(1)

⁸ 19 U.S.C. § 1862(b)(2)(A)(iii)

⁹ 15 C.F.R. § 705.7(a)

¹⁰ 19 U.S.C. § 1862(b)(2)(A)(iii)

¹¹ 15 C.F.R. § 705.8

¹² 15 C.F.R. § 705.7(c)

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

Action	Timeframe	Statute/Regulation	Recent Practice
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. ¹³ 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 steel and aluminum investigations, DOC submitted its reports to the President 267 days and 266 days, respectively , after initiating the investigations. In the automotive investigation, DOC submitted its report 270 days after initiating the investigation.
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. ¹⁴	DOC published its reports on the steel and aluminum investigations on February 16, 2018 – 36 days after submitting the steel report to the President and 30 days after submitting the aluminum report.
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. ¹⁵	In the steel and aluminum investigations, the President announced his determination and action on March 8, 2018 – 56 days after receiving the steel report and 50 days after receiving the aluminum report.

¹³ 19 U.S.C. § 1862(b)(3)(A)

¹⁴ 19 U.S.C. § 1862(b)(3)(B)

¹⁵ 19 U.S.C. § 1862(c)(B)