

AN OVERVIEW OF
***unilateral TRADE REMEDY
AUTHORITY: Sections 232
and 301***

Topics to be Covered

- **Section 232** of the Trade Expansion Act of 1962 (19 U.S.C. Sec. 1862, as amended (“National Security Investigation”); and
- **Section 301** of the Trade Act of 1974, as amended

Section 232

NATIONAL SECURITY

Section 232 – National Security

- ***Authorizes President to restrict imports of merchandise that threatens national security***
 - ***No unfair trade or injury finding required***
- ***Can be initiated by a U.S. industry or self-initiated by Administration***

Section 232 Timing

- *DOC (in consultation with DOD) conducts 270-day investigation pursuant to petition or self-initiation and makes recommendations to President on remedy*
- *President has 90 days to make decision and 15 days thereafter to take action (note: 1988 amendments imposed deadlines on President to take action—response to failure to act)*
- *President has 30 days to report reasons to Congress*
- *180 deadline to negotiate agreements with foreign government*

Section 232 Remedies

- ***Remedies can include:***
 - ***Increased tariffs, tariff-rate quotas, quotas, negotiation of voluntary restraint agreement***
- ***Duration of remedy is at discretion of President***

Section 232 – Rarely Used

- ***14 investigations since 1980, very few resulted in relief—last affirmative was machine tools in 1986***
- ***In 2018, Trump Administration acted affirmatively on steel and aluminum (tariffs and quotas)***
- ***Other investigations on automobiles and parts, uranium ore and titanium sponge were found to impair national security, but no relief provided***

Recent 232 Activities

- *Pending investigations on transformers, grain oriented steel, mobile cranes and vanadium*
- *Steel and Aluminum Exemption Process*
 - *Unprecedented in size and scope*
 - *As of July 2020, DOC received 222,773 exclusion requests,*
 - *189,886 for steel and 23,904 for aluminum*
 - *30,189 granted for steel and 3,189 for aluminum*
 - *Complaints from both proponents and opponents of exemptions*

232 Litigation

- *Constitutional challenges have been rejected*
- *Transpacific Steel LLC v. United States - no amendment past deadline established by Statute*
- *JSW Steel Ltd. V. United States - failure to have record support for decision*
- *PrimeSource Building Products Inc. v. United States et al - pending challenge to downstream product duties*
- *WTO—multiple challenges (and retaliatory measures not authorized by WTO)*

Section 301

FOREIGN MARKET ACCESS

Section 301

- *Primarily for combating unfair practices affecting access by U.S. companies to foreign markets*
- *Provides USTR with broad authority to combat a government act, practice, or policy that is:*
 - *Inconsistent with the provisions of a trade agreement; or*
 - *Unreasonable or discriminatory, and burdens or restricts U.S. commerce*

Section 301

- *“Unreasonable” means “unfair or inequitable,” including those which deny “fair and equitable opportunities for the establishment of an enterprise” or “market opportunities”*
- *Includes import quotas, restrictive import licensing schemes, arbitrary technical standards that are unnecessary to protect public health and safety, IP theft and other unjustifiable restrictions on trade*

Combination of Litigation/Policy Remedy

- ***Two tracks***
 1. ***Violation of trade agreement → WTO.***
 2. ***If not covered by trade agreement → unilateral action authorized***
- ***Settlement can occur before or after “litigation” before the USTR and WTO***
- ***In this context, imposition of import duties, usually means an unsuccessful outcome***
- ***Retaliatory duties are a means to achieve market opening***
 - ***Threat of retaliation is often as successful as actual retaliation***

Statutory Process

- *Initiated by industry petition or self-initiated by President*
- *If industry petition:*
 - *Petition process less formal than for AD/CVD*
 - *“Investigation” by USTR, 45-day time limit*
 - *If petition accepted, consultation required, if not accepted, no judicial review*
 - *Deadlines to take action once investigation initiated*
- *Process has largely fallen into disuse*
- *Now, much more informal - discussions, papers, with USTR but petitions are rare*

Unilateral Action by President Trump

- ***Trump administration self-initiated investigation of Chinese unfair trade practices***
 - ***IP theft, discrimination against U.S. exports, China 2025 subsidization and other unfair practices***
- ***Imposition of tariffs on wide variety of products resulting in 4 sets of duties***
- ***Exemption process***
- ***Recent WTO panel decision***
- ***U.S. litigation***