

THE COLLATERAL EFFECTS OF SPECIAL TARIFFS ON TRADITIONAL TRADE AND CUSTOMS ISSUES

The Intersection of Special Tariffs and the International Trade Commission

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I. INTRODUCTION

In 2018 and 2019, the Trump Administration utilized authority delegated to the President by Congress to adjust tariffs and other trade restrictions by the use of special tariffs. Specifically, President Trump initiated several investigations and imposed increased tariffs on imported steel and aluminum under Section 232 of the Trade Expansion Act of 1962 to address national security concerns and applied tariffs on nearly all goods imported from China under Section 301 of the Trade Act of 1974 to counter China's trade practices on forced technology transfer and intellectual property rights, among other issues.

Section II of this paper provides an outline of the Section 232 investigations initiated by the current Administration, including its imposition of additional tariffs and quantitative restrictions on steel and aluminum imports, its pursuit of a negotiated solution regarding automobiles and certain automotive parts, its determination that uranium imports do not threaten national security, and its ongoing investigation into titanium sponge imports. This paper then provides a timeline for the imposition of 25% tariffs and the application of quantitative limitations on steel and aluminum imports. As of June 17, 2019, there have been 62,797 exclusion requests filed for steel products and steel manufacturers have filed 22,210 objections to exclusion requests. BIS has reached a decision on 70 percent of the steel exclusion requests; 30,545 (49 percent) have been approved, 13,261 (21 percent) have been denied, and 18,991 (30 percent) remain pending. As

of June 17, 2019, there have been 9,974 exclusion requests for an exemption from the aluminum tariffs, and aluminum manufacturers have filed 2,456 objections. The BIS has reached a decision on 59 percent of the aluminum exclusion requests; 4,978 (50 percent) have been approved, 862 (9 percent) have been denied, and 4134 (41 percent) remain pending. Given that exclusions from the Section 232 measures on steel and aluminum that have been granted are generally applicable for one year from the date of signature or until all the excluded product volume is imported, in 2020 companies are likely to resubmit requests for expiring exclusions.

Because there is no designated end date for the Section 232 tariffs, there is ongoing uncertainty in the steel and aluminum market. Moreover, the imposition of Section 232 tariffs on steel and aluminum imports has spurred retaliatory countermeasures and challenges before the World Trade Organization, as well as domestic litigation. Finally, Members of Congress have introduced legislation to limit or moderate the President's ability to utilize the national security provision and to require increased Congressional oversight on proposed Section 232 actions.

Section II also provides examples of the information collected by the U.S. International Trade Commission during antidumping and countervailing duty investigations and summarizes the role Section 232 tariffs and quantitative measures are playing in these proceedings. Since the Section 232 investigations into steel and aluminum imports were announced, the Commission regularly requests information from industry participants in its questionnaires regarding the effects of the Section 232 proceeding on the industry at issue. Now that the Section 232 measures have been in place for a significant period of time, the Commission is receiving more information from questionnaire responses and has considered, among other aspects, the impact of the measures on conditions of competition, on raw material costs, and on industry performance indicators, as well as the relevance of period of investigation data versus interim data. Section II.6 summarizes some

of the information reported by market participants and lays out certain trends and themes with respect to how the Commission has addressed the Section 232 measures to date. As the time that Section 232 measures are in place increases, it is likely that the Commission will continue to have more fulsome discussions of the effect of the tariffs and quantitative restrictions on the injury analysis.

Section III of this paper provides background on and a timeline of the Trump Administration's investigation pursuant to Section 301 of the Trade Act of 1974 to address the acts, policies and practices of the Government of China directed at the forced transfer of U.S. and other foreign technologies and intellectual property. President Trump has launched four rounds of tariffs ranging from 10% to 25% and covering nearly all products from China, cumulatively valued at approximately \$550 billion. The United States Trade Representative is handling the exclusion process for Section 301 tariffs and will grant exclusions on an product-wide basis (*i.e.*, unlike with respect to Section 232, exclusions are not only granted for the requesting company).

As with the Section 232 investigation, the Commission has routinely requested information on the impact of the Section 301 investigation from market participants in its questionnaires. Section III provides a summary and overview of the Commission's consideration of the impact of Section 301 tariffs in antidumping and countervailing duty investigations. Although there have been a limited number of final determinations since the Section 301 tariffs have been in place, the Commission has considered the Section 301 tariffs to be a factor in mitigating the responsiveness of supply. It is uncertain how long the Section 301 tariffs will remain in place, but if they remain in effect into 2020, there will likely be more discussion of the impact of these measures in Commission opinions.

In response to the imposition of Section 301 tariffs, China has imposed retaliatory tariffs at rates ranging from 5% to 25% on \$110 billion worth of imports from the United States and has also requested consultations at the World Trade Organization. It is significant that China and the United States have conducted negotiations on the U.S. Section 301 investigation and it was recently announced by the Trump Administration that China and the United States had reached a “fundamental agreement” on several key trade issues, although a deal has yet to be signed. It remains to be seen what effect this “agreement” will have on the Section 301 tariffs. Thus, there is still uncertainty in the market surrounding these tariffs.

II. SECTION 232

A. Background

**1. Section 232 of the Trade Expansion Act of 1962 ([19 U.S.C. § 1862 et seq.](#))
(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)**

2. Section 232 investigations initiated by the current Administration:

- a) The Effect of Imports of Steel on the National Security
 - (1) Investigation initiated [April 19, 2017](#)
 - (2) [BIS report](#) issued Jan. 2018
 - (3) [DOD Response](#)
- b) The Effect of Imports of Aluminum on the National Security
 - (1) Investigation initiated [April 26, 2017](#)
 - (2) [BIS report](#) issued Jan. 2018
 - (3) [DOD Response](#)
- c) The Effect of Imports of Motor Vehicles and Automotive Parts on the National Security
 - (1) Investigation initiated [May 23, 2018](#)
 - (2) BIS report February 17, 2019 (report not publicly released)
 - (3) [May 17, 2019](#): President announces determination that U.S. imports of automobiles and certain automotive parts threaten to impair national security and announces that he will direct

USTR to pursue the negotiation of agreements with the EU, Japan, and any other country the Trade Representative deems appropriate to address the threatened impairment of national security.

- (4) The USTR is to report on its progress 180 days from the President's announcement or November 13, 2019.
 - (5) On [September 25, 2019](#), the United States and Japan signed a limited trade deal. The deal does not cover trade in autos, but Prime Minister Shinzo Abe reported to news outlets that President Trump confirmed that no further, additional tariffs will be imposed. The USTR said after the signing ceremony that the United States and Japan would address autos in a later round of negotiations, expected to start in April 2020.
- d) The Effect of Imports of Uranium on the National Security
- (1) Investigation initiated [July 18, 2018](#)
 - (2) BIS report April 2019 (report not publicly released)
 - (3) President's Uranium 232 Memo [July 12, 2019](#), stating that the President did "not concur with the Secretary [of Commerce]'s finding that uranium imports threaten to impair the national security of the United States under section 232 of the Act.
- e) The Effects of Imports of Titanium Sponge on the National Security
- (1) Investigation initiated [March 4, 2019](#)
 - (2) BIS Report due November 2019

3. Section 232 Steel and Aluminum Tariffs

- a) March 8, 2018: President Trump announced the imposition of tariffs under Section 232 of the Trade Expansion Act of 1962 to be effective on March 23, 2018.
- (1) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/> (steel)
 - (2) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/> (aluminum)
- b) March 22, 2018: the President issued Proclamations that temporarily exempted imports of steel and aluminum from Australia, Argentina, South Korea, Brazil, Canada, Mexico, and EU member countries from the tariffs until May 1, 2018. The exemptions were later extended to June 1.
- (1) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-2/> (steel)

- (2) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states-2/> (aluminum)
- c) For steel imports, South Korea, Brazil, and Argentina agreed to quotas and are not subject to the tariffs, and Australia is exempted from the tariffs.
- d) For aluminum imports, Argentina agreed to a quota and Australia is exempted.
- e) August 10, 2018: the President issued a new Proclamation raising the tariff on imports of steel from Turkey to 50% *ad valorem*.
 - (1) <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states-5/>
- f) May 16, 2019: the President modified Proclamation 9705 to remove the higher tariff on steel imports from Turkey imposed by Proclamation 9772, and to instead impose a 25 percent *ad valorem* tariff on steel imports from Turkey
 - (1) <https://www.whitehouse.gov/presidential-actions/proclamation-adjusting-imports-steel-united-states/>
- g) May 19, 2019: the President issued two Proclamations adjusting Proclamations 9704 and 9705 after the United States announced an agreement with Canada and Mexico to remove the Section 232 tariffs for steel and aluminum imports for those countries
 - (1) <https://www.whitehouse.gov/presidential-actions/proclamation-adjusting-imports-steel-united-states-2/> (steel)
 - (2) <https://www.whitehouse.gov/presidential-actions/proclamation-adjusting-imports-aluminum-united-states/> (aluminum)

4. Section 232 Exclusions Process

- a) There is a process to request exclusions from the Section 232 tariffs that is being handled by the Bureau of Industry and Security at the Commerce Department. (<https://www.bis.doc.gov/index.php/232-steel>)
- b) Only directly affected individuals or organizations located in the United States, who are using steel and or aluminum in business activities in the United States, are eligible to submit requests for

exclusion from the steel or aluminum tariffs and/or quantitative limitations imposed under Section 232.

- c) A product exclusion will be granted if the article is not produced in the United States: (1) in a sufficient and reasonably available amount; (2) of satisfactory quality; or (3) if there is a specific national security consideration warranting an exclusion.
 - (1) The process involves the filing of a request for an exclusion, the opportunity for U.S. parties to file objections (*i.e.*, a 30-day comment period) and rebuttals to the objections, and review of all submissions by BIS.
 - (2) The total processing time for exclusion requests is estimated by BIS to be approximately 90 days.
 - (3) Thus far, however, the exclusion process is taking longer than the estimated 90 days because of the extremely high volume of requests.
 - (4) If an exclusion does not receive an objection, it is placed into a streamlined process for a decision determination after a national security review.
 - (5) Companies are able to obtain retroactive relief for the period between the date of submittal and the date the request was granted.
- d) Exclusions, which are effective five days after the decision is posted on www.regulations.gov, are generally granted for one year from the date of signature or until all the excluded product volume is imported (whichever comes first).
- e) Commerce developed an online portal (<https://232app.azurewebsites.net/steellalum>) that replaced the use of the federal rulemaking portal for the submission of exclusion requests and related filings in connection with Section 232 tariffs beginning June 13, 2019
 - (1) <https://www.govinfo.gov/content/pkg/FR-2019-06-10/pdf/2019-12254.pdf>
 - (2) Guide/FAQs: <https://www.bis.doc.gov/index.php/documents/section-232-investigations/2409-section-232-faq/file>
- f) As of June 17, 2019, there have been 62,797 exclusion requests filed for steel products and steel manufacturers have filed 22,210 objections to exclusion requests. BIS has reached a decision on 70 percent of the steel exclusion requests; 30,545 (49 percent) have been approved, 13,261 (21 percent) have been denied, and 18,991 (30 percent) remain pending. (<https://quantgov.org/section-232-tariffs/>)

- g) As of June 17, 2019, there have been 9,974 exclusion requests for an exemption from the aluminum tariffs, and aluminum manufacturers have filed 2,456 objections. The BIS has reached a decision on 59 percent of the aluminum exclusion requests; 4,978 (50 percent) have been approved, 862 (9 percent) have been denied, and 4134 (41 percent) remain pending. (<https://quantgov.org/section-232-tariffs/>)

5. Legislative Action, WTO Challenges, and Retaliatory Countermeasures With Respect to Section 232 Tariffs

a) U.S. Congress

- Some Members of Congress have expressed concerns about the use of Section 232 in this context, while a few Members have supported expanding the President's reciprocal trade powers.
- Legislation introduced in the 116th Congress would limit the power of the President to enact future 232 tariffs without Congressional approval, and could impact existing tariffs.

(1) Bicameral Congressional Trade Authority Act of 2019 (S. 287/H.R. 940)

- (a) Require the President to submit to Congress any proposal to adjust imports in the interest of national security under the Trade Expansion Act of 1962
- (b) Give Congress 60 days to approve any proposed Section 232 actions and, without such approval, the President's proposed trade action would have no force or effect
- (c) Transfer investigative authority from Commerce to the Secretary of Defense
- (d) Define "national security" and restrict Section 232 investigations to goods with military equipment, energy resources, and/or critical infrastructure
- (e) Require goods to constitute a "substantial cause" of a threat to impair U.S. national security
- (f) Require the U.S. International Trade Commission to administer an exclusion process for future Section 232 actions
- (g) Exclusions must be product-wide
- (h) Direct the ITC to submit to Congress reports analyzing the industry-specific and downstream effects of any Section 232 actions taken within the

- past four years, in addition to any future actions
- (i) Provide for the possible retroactive repeal of Section 232 actions taken within the past four years
- (j) Text is available at
<https://www.scribd.com/document/398583444/Bicameral-Congressional-Trade-Authority-Act-Bill-Text>

(2) **Trade Security Act of 2019** (S. 365/H.R. 1008)

- (a) An alternative to the Bicameral Congressional Trade Authority Act of 2019, the Trade Security Act of 2019 revives a similar bill that was introduced in the 115th Congress, the [Trade Security Act of 2018](#).
- (b) Trade Security Act of 2019 focuses largely on shifting responsibility for Section 232 investigations from the Secretary of Commerce to the Secretary of Defense
- (c) If DOD determines a national security threat exists, the President may direct DOC to recommend possible courses of action/inaction
- (d) Congress may disapprove Presidential actions related to Section 232
- (e) Applies only to future applications of Section 232
- (f) No major role for the ITC

(3) **United States Reciprocal Trade Act**

- (a) Grants the President unilateral power to raise tariffs if the President determines that the rate of duty or nontariff barriers imposed by a country on a particular good impose “significantly higher burdens” than those imposed by the U.S.
- (b) USTR, in consultation with Secretaries of Treasury, Commerce and heads of “other relevant Federal agencies” advise the President in determining effective rate of duty for a particular good
- (c) Text is available at
https://insidetrade.com/sites/insidetrade.com/files/documents/2019/jan/wto2019_0028.pdf

b) WTO Panels Requested By Several Countries

- (1) Several countries also have requested consultations and the establishment of dispute resolution Panels at the WTO.
(https://www.wto.org/english/news_e/news18_e/dsb_19nov1)

[8 e.htm](#) and https://www.wto.org/english/news_e/news18_e/dsb_04dec18_e.htm)

- (2) WTO dispute panels are currently reviewing U.S. section 232 duties
 - (a) On November 21, 2018, the WTO's Dispute Settlement Body agreed to requests from seven members for the establishment of panels to examine the Section 232 tariffs on steel and aluminum imports imposed by the United States
 - (b) The seven members are China, the EU, Canada, Mexico, Norway, Russia, and Turkey
 - (c) More than 20 WTO members reserved third-party rights to participate in the respective proceedings
 - (d) The Panel was composed on January 25, 2019
 - (e) [DS564](#)
- (3) On December 4, 2018, the WTO's DSB established a panel based on requests from India and from Switzerland on Nov. 8, 2018
 - (a) 29 countries reserved their third-party rights
 - (b) The Panel was composed on January 25, 2019
 - (c) [DS556](#)
- (4) The DSB also agreed to four U.S. requests for panels to examine countermeasures imposed by China, Canada, the EU, Mexico, and Turkey in response to the Section 232 tariffs
 - (a) [DS557 \(Canada\)](#) – Panel Report issued July 11, 2019; settled/terminated (withdrawn, mutually agreed solution) on May 28, 2019
 - (b) [DS558 \(China\)](#) – Panel composed January 25, 2019
 - (c) [DS559 \(EU\)](#) – Panel composed January 25, 2019
 - (d) [DS560 \(Mexico\)](#) – Panel Report issued July 11, 2019; settled/terminated (withdrawn, mutually agreed solution) on May 28, 2019
 - (e) [DS561 \(Turkey\)](#) – Panel composed on February 28, 2019

c) Retaliatory Countermeasures

- (1) Several countries, including Canada, China, the EU, Japan, Mexico, Russia, and Turkey have imposed retaliatory countermeasures on imports of products from the United States into their countries.

d) Domestic Court Litigation Regarding Section 232

- (1) [American Institute for International Steel](#) (AIIS)– the AIIS, a trade association, challenged constitutionality of Congress’ delegation of authority to the President under Section 232
 - (a) March 25, 2019 – the CIT rejected Plaintiffs’ arguments and granted Defendant’s motion for judgment on the pleadings.
 - (b) AIIS requested that the Supreme Court of the United States hear its case directly, but the Supreme Court declined to hear the case on June 24, 2019
 - (c) AIIS filed an appeal with the U.S. Court of Appeals for the Federal Circuit, which is pending before the Court
- (2) [Severstal Export Gmbh](#) – a Swiss company that negotiated and arranged sales of steel products with foreign customers and its Miami importer of record sought preliminary injunction to prevent the government from collecting the 25 percent tariff;
 - (a) April 5, 2018 – Plaintiffs’ motion denied by the CIT
 - (b) The parties agreed to dismiss the case in May 2018
- (3) JSW Steel (USA) Inc. – July 30, 2019: JSW Steel filed a complaint against the United States and the Department of Commerce for denying its product exclusion request for certain steel imports otherwise subject to the 25 percent Section 232 tariffs
 - (a) Case is pending before the CIT

6. Section 232: AD/CVD-specific issues in USITC proceedings

a) Timing

- (1) Because it is unclear how long the tariffs will remain in place, parties to ITC investigations have differing views on the impact of the tariffs on conditions of competition in the U.S. market.

- (2) In addition, up until recently the Commission has had only limited information available on the impact of the tariffs.

Example 1: *Clad Steel Plate from Japan*, Inv. No. 731-TA-739 (Fourth Review), [USITC Pub. 4851](#) (Dec. 2018).

- Limited available information does not indicate that section 232 had an effect on market conditions. (at 19)

Example 2: *Tapered Roller Bearings from Korea*, Inv. No. 731-TA-1380 (Final), [USITC Pub. 4806](#) (Jul. 2018).

- “Timken and respondents agreed that proposed section 232 tariffs on steel or auto parts and their possible impact on future volumes of subject imports were too speculative at this time to be given any weight in this determination.” (at 39, n.204)

Example 3: *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731-TA-860 (Third Review), [USITC Pub. 4795](#) (June 2018).

- The Commission observed that “assessing the likely market impact of the Section 232 tariffs is challenging given their recent origin and their uncertain scope.” (at 19)
- Because the Section 232 tariffs were “imposed near date of record closing, the Commission collected only limited information which would allow us to examine any exiting effects of the tariffs on different sources of supply in the market and might otherwise inform our likely volume analysis. Nevertheless, the Commission has considered these measures in its analysis as a relevant economic factor.” (at 19-20)
- “While we recognize that 25 percent tariffs under Section 232 have recently been applied to imports of TCCSS from non-exempt countries including Japan, any current predictions of the effects of these tariffs on market conditions are speculative. The limited available information in the current record, covering a period of review that ended prior to the imposition of the Section 232 tariffs, does not indicate that the tariffs have resulted in significant changes in market conditions for the domestic TCCSS industry as of the closing of the record.” (p. 30)

b) ITC Questionnaires

- (1) ITC questionnaires now regularly request information about the effect of Section 232 tariffs on market participants.

Example 1: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Final).
Questionnaires available at https://www.usitc.gov/investigations/701731/2019/refillable_stainless_steel_kegs_china_germany_and/final.htm.

The U.S. importers' questionnaire asked:

III-20 (a). **Raw materials.**—How have refillable stainless steel keg raw material prices changed since January 1, 2016?

Item	Overall increase	No change	Overall decrease	Fluctuate with no clear trend	Explain, noting how raw material price changes have affected your firm's selling prices for refillable stainless steel kegs.
Cost of raw materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

(b) **Effect of section 232 duties on raw material prices.**—Did the announcement of the section 232 investigation in April 2017 or the subsequent imposition of tariffs on imported steel products beginning in March 2018 have an impact on the raw material prices for refillable stainless steel kegs?

Yes—Please indicate the impact in the table below.	No	Don't know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Item	Increase	No change	Decrease	Fluctuate with no clear trend	Explanation and factors
Raw material costs for refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Prices for refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Example 2: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Prelim.).

Questionnaires for this investigation are available at https://www.usitc.gov/investigations/701731/2018/refillable_stainless_steel_kegs_china_germany_and/preliminary.htm. The U.S. importers' questionnaire asked the following question:

III-22. **Effect of 232 investigation of steel on refillable stainless steel keg raw materials.**—

(a) Are you familiar with the 232 investigation or the subsequent imposition of tariffs on imported steel and aluminum products?

☐ No (skip part b) ☐ Yes (complete part b)

(b) Did the announcement of the 232 investigation in April 2017 or the subsequent imposition of tariffs on imported steel and aluminum products beginning in March 2018 impact the raw material prices for stainless steel kegs?

	No	Yes	If yes, describe impact.
Announcement of the 232 investigation in April 2017	<input type="checkbox"/>	<input type="checkbox"/>	
Imposition of tariffs on imported steel and aluminum products beginning in March 2018	<input type="checkbox"/>	<input type="checkbox"/>	

Example 3: *Aluminum Wire and Cable from China*, Inv. Nos. 701-TA-611 and 731-TA-1428 (Final). Questionnaires available at https://www.usitc.gov/investigations/701731/2019/aluminum_wire_and_cable_china/final.htm. The questionnaire for U.S. importers asked:

III-21. **Impact of the section 232 investigation.**—This question concerns the section 232 investigation and subsequent tariffs imposed on imported aluminum products.

- (a) Did the announcement of the section 232 investigation in April 2017 or the subsequent imposition of tariffs on imported aluminum products beginning in March 2018 have an impact on the AWC market?

Yes—Please fill out table below and answer part (b)	No	Don't know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Item	Response
Impact on your firm ¹	<input type="checkbox"/>
Impact on overall U.S. market ¹	<input type="checkbox"/>

¹ Please identify the magnitude and timing of any effects, and compare your firm's operations/overall market before and after the application of additional tariffs on imported aluminum products.

- (b) **Assessment of impact of the section 232 tariffs.**—Please indicate the impact of the section 232 investigation and subsequent imposition of tariffs on imported aluminum products beginning in March 2018.

Item	Increase	No change	Decrease	Fluctuate with no clear trend	Explanation
Overall demand for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supply of AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prices for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raw material costs for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

c) Effects of Section 232 Measures on Employment, Costs of Raw Materials and Feedstock

(1) Parties at the ITC have argued about the scope and impact of the Section 232 tariffs:

- (a) Arguments made about the primary effects on imports of steel and aluminum
- (b) Arguments made about the secondary effects because steel and aluminum imports are the raw materials and feedstock used in the manufacture of downstream products.

Example 1: *Steel Racks from China*, Inv. Nos. 701-TA-608 and 731-TA-1420 (Final), USITC Pub. 4951 (Sept. 2019)

- *“Both the Coalition and UMH acknowledge that the duties of 25 percent ad valorem imposed in March 2018 on imported steel mill products pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, were an important factor in the increased costs of hot-rolled steel for the production of steel racks.”* (p. 18)

Example 2: *Steel Wheels from China*, Inv. Nos. 701-TA-602 and 731-TA-1412 (Final), USITC Pub. 4892 (May 2019)

- *“The parties agree that the duties of 25 percent ad valorem imposed in March 2018 on imported steel mill products pursuant to Section 232 of the Trade Expansion Act of 1962, as amended, were an important factor in the increased cost of hot-rolled steel for the production of steel wheels in interim 2018. Duties of ten percent ad valorem also were placed on steel wheels from China in September 2018 pursuant to Section 301 of the Trade Act.”* (p. 18)

Example 3: *Tapered Roller Bearings from China*, Inv. No. 731-TA-344 (Fourth Review), [USITC Pub. 4824](#) (Sept. 2018)

- Section 232 tariffs *“do not directly affect in-scope TRBs, but have affected raw material costs for domestic producers importing steel to produce the domestic like product.”* (at 25-26 at n.175)

Example 4: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Prelim.), [USITC Pub. 4844](#) (November 2018)

- The Section 232 tariff applies to imports of stainless steel coil, which is a raw material for Petitioner, but not the subject merchandise, and resulted in increased raw material costs. (at 20)
- *“Petitioner has acknowledged that the Section 232 tariff had a negative impact on its business.”* (at 20)
- *“American Keg publicly attributed its layoff of 10 employees in 2018 to the additional raw material costs it expected to incur as a result of the Section 232 tariff.”* (at 20, n.18)
- The Commission stated that it will *“examine more closely the effects of Section 232 tariff on American Keg’s raw material costs in any final phase of the investigations.”* (at 28)

Example 5: *Large Power Transformers from Korea*, Inv. No. 731-TA-1189 (First Review), [USITC Pub. 4826](#) (Oct. 2018)

- *“Most responding domestic producers also reported that the imposition of tariffs on imports of steel products pursuant to section 232 has had or will have a substantial effect on their raw material prices.”* (at 21)

Example 6: *Steel Racks from China*, Inv. No. 731-TA-1420 (Prelim.), [USITC Pub. 4811](#) (Aug. 2018)

- Petitioners contended that Section 232 increased raw material costs. (at 19)

Example 7: *Drawn Stainless Steel Sinks from China*, Inv. Nos. 701-TA-489 and 731-TA-1201 (First Review), [USITC Pub. 4810](#) (Aug. 2018)

- “*The limited nature of the record in the expedited reviews does not indicate the extent to which overall prices for stainless steel coil have or are likely to increase as a result of any such tariffs.*” (at 12, n. 70).

Example 8: *Steel Wheels from China*, Inv. Nos. 701-TA-602 and 731-TA-1412 (Prelim.), [USITC Pub. 4785](#) (June 2018)

- The Commission cited to respondent’s post-conference brief to support its assertion that the tariffs have raised the price of imported and domestically-produced steel and increased the cost of downstream products produced from steel (Non-confidential Staff Report at VI-3, n. 10).

- (2) **The Commission also may consider whether the domestic industry has applied for exclusion requests or whether the Administration has granted an exclusion from the Section 232 tariffs for the subject merchandise.**

Example 1: *Common Alloy Aluminum Sheet from China*, Inv. Nos. 701-TA- 591 and 731-TA-1399 (Final), [USITC Pub. 4861](#) (Jan. 2019)

- “*Information in the record indicates that Commerce has granted the large majority of exclusion requests for various aluminum sheet products, including CAAS.* (at 21 and n.125)
- “*There is information in the record indicating that the domestic industry had some supply constraints during the POI, including those reported by purchasers and other market participants, those relating to Aleris’s idling of its Lewisport facility for two months in the second half of 2017, and those motivating certain domestic producers of CAAS to submit Section 232 product exclusion requests.*” (at 30).

Example 2: *Clad Steel Plate from Japan*, Inv. No. 731-TA-739 (Fourth Review), [USITC Pub. 4851](#) (Dec. 2018)

- “*While forty-two exclusion requests were granted, covering seven companies importing steel products from Belgium, China, Germany, Japan, and Sweden, no clad steel plate products from Japan were excluded.*”(at 16)

Example 3: *Tin- and Chromium-Coated Steel Sheet from Japan*, Inv. No. 731-TA-860 (Third Review), [USITC Pub. 4795](#) (June 2018)

- “*At the time of the record closing in this review, Commerce had not acted upon any product-specific exclusion requests, including for TCCSS from Japan.*” (at 16)

d) Information Reported by Market Participants about Changes in Conditions of Competition

Example 1: *Clad Steel Plate from Japan*, Inv. No. 731-TA-739 (Fourth Review), [USITC Pub. 4851](#) (Dec. 2018)

- “*Most firms reported that they did not anticipate that additional developments related to the Section 232 investigation and imposition of the tariffs would impact the conditions of competition for clad steel plate in the future.*” (at 20)
- “*A majority of market participants reported that they were familiar with the Section 232 investigation, and reported that the issuance of proclamations and tariffs had some impact on the conditions of competition for clad steel plate.*” (at 20, n.118)

Example 2: *Silicomanganese from China and Ukraine*, Inv. Nos. 731-TA- 672-673 (Fourth Review), [USITC Pub. 4845](#) (Nov. 2018)

- “*Finally, market participants indicated that tariffs imposed on certain steel products under Section 232 of the Trade Expansion Act did not affect conditions of competition for silicomanganese.*” (at 26)

Example 3: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Prelim.), [USITC Pub. 4844](#) (Nov. 2018)

- A “*majority of responding importers indicated that the imposition of Section 232 tariffs on imported steel in March 2018 affected raw material costs.*” (at 20, n. 117)

e) Other analysis of Section 232 tariffs in published Commission opinions

- (1) **The Commission has noted that Section 232 tariffs, combined with other factors, may render interim 2019 data less instructive than the full year data in the POI.**

Example 1: *Steel Racks from China*, Inv. Nos. 701-TA-608 and 731-TA-1420 (Final), [USITC Pub. 4951](#) (Sept. 2019)

- “*We note that there were multiple factors affecting interim 2019*

*data, which only covered the first quarter of 2019. Specifically, Commerce’s preliminary CVD determination, which found margins in excess of 100 percent for multiple Chinese exporters, was issued in these investigations in December 2018; ***; the imposition of Section 232 duties; and additional Section 301 duties on steel racks from China were factors. Further, the fact that our subject import data is based on export data raises timing issues as to when shipments of subject imports were exported and when they were present in the U.S. market. Therefore, we find the interim 2019 data less instructive than the full year data in the POI, given the various factors affecting the data in this short period, including postpetition effects.” (p.19, n.88)*

Example 2: *Common Alloy Aluminum Sheet from China*, Inv. Nos. 701-TA-591 and 731-TA-1399 (Final), [USITC Pub. 4861](#) (Jan. 2019)

- *“While subject imports’ volume and market share both were lower in interim 2018 than in interim 2017, the parties agree that these declines were a function of the pendency of these investigations and the imposition of Section 232 tariffs on aluminum products CAAS. Thus, we have given principal weight to the full year data (i.e., 2015-2017) for purposes of our volume analysis.” (at 22-23).*

(2) The Commission may consider the impact of Section 232 when considering price suppression.

Example 1: *Steel Racks from China*, Inv. Nos. 701-TA-608 and 731-TA-1420 (Final), [USITC Pub. 4951](#) (Sept. 2019)

- *“UMH has argued that the cost-price squeeze experienced by the domestic industry was due to the Section 232 duties rather than subject imports. UMH Prehearing Brief at 10-11. Based on the full-year financial data, the industry was generally able to pass along most of its raw material cost increases and, in any event, we are not relying on price suppression as the basis for our finding of significant price effects.” (p. 19, n.114)*

Example 2: *Certain Collated Steel Staples from China, Korea, and Taiwan*, Inv. Nos. 701-TA-626 and 731-TA-1452-1545 (Prelim.), [USITC Pub. 4939](#) (July 2019)

- *“A decline in apparent U.S. consumption in 2018 and early 2019 may have constrained the domestic industry’s ability to further raise its prices as its raw material costs increased due at least in part to the Section 232 tariffs and the antidumping and countervailing duty orders on imports of wire rod in 2018.” (p. 27)*
- *“Based on the record in the preliminary phase of these investigations, however, we cannot conclude that subject imports*

from China have not prevented price increases for domestic producers, which otherwise would have occurred, to a significant degree. Accordingly, we find that subject imports from China had significant adverse price effects on the domestic industry.” (p.28)

- *“As explained above, the domestic industry’s raw material costs increased substantially during the POI, at least in part as a result of the Section 232 tariffs and antidumping and countervailing duty orders on imports of wire rod in 2018, and this affected the domestic industry’s profitability. In any final phase of these investigations, we intend to further explore the degree to which the domestic industry reasonably should have been able to achieve additional price increases to cover these rising costs, particularly in light of the weaker apparent consumption toward the end of the POI.” (p.31)*

Example 3: *Steel Wheels from China, Inv. Nos. 701-TA-602 and 731-TA-1412 (Final), [USITC Pub. 4892](#) (May 2019)*

- *“As discussed earlier, an important factor in the increased cost of producing steel wheels in interim 2018 was the higher cost of HRC, due at least in part to the Section 232 duties imposed in March 2018. We recognize that the domestic industry experienced a cost-price squeeze as its cost increases outpaced its increases in its average unit values. As previously discussed, the domestic industry sells its steel wheels primarily *** ** contracts frequently have raw material cost adjustments, there typically is a lag before an adjustment takes effect. Therefore, we cannot conclude that the domestic producers should have been able to raise prices more than they did in interim 2018. Despite this cost-price squeeze in interim 2018, we find overall that subject imports have not prevented price increases that would otherwise have occurred to a significant degree.” (p.23-24)*
- *“We find that the significant increase in raw material costs in interim 2018 and the reliance of the domestic industry on long-term sales contracts, and not subject imports, limited the ability of U.S. producers to raise their prices in the short run.” (p. 41)*
- *“Therefore, there is no reason to assume that the domestic industry should have been able to adjust its prices to the same degree as a sharp rise in raw materials costs in interim 2018. Finally, a representative of the Petitioners stated at the hearing that there are lags of 3 to 6 months in price adjustments for raw material costs. Hearing Tr. at 110 (Risch). The section 232 tariffs on steel, which appear to be the main driver in increased raw material costs, were imposed in March 2018. Therefore, according to the domestic industry’s own estimates, there has not been enough time for U.S. steel wheels prices to adjust to the rapid increase in raw material prices related to the section 232 tariffs.” (p. 42, n.63)*

**(3) The Commission may consider the impact of
Section 232 on overselling and underselling.**

Example 1: *Common Alloy Aluminum Sheet from China*, Inv. Nos. 701-TA- 591 and 731-TA-1399 (Final), [USITC Pub. 4861](#) (Jan. 2019)

- *“Of the 16 quarters of overselling observed for the eight pricing products, 10 instances occurred within the first 5 quarters of the POI and the remaining 6 instances occurred in the final quarter of the POI when Section 232 tariffs and preliminary duties were affecting the market.”* (at 24, n.140).

**(4) The Commission has considered the role of Section 232
in the domestic industry’s performance indicators**

Example 1: *Common Alloy Aluminum Sheet from China*, Inv. Nos. 701-TA- 591 and 731-TA-1399 (Final), [USITC Pub. 4861](#) (Jan. 2019)

- *“Although most of the domestic industry’s performance indicators improved in interim 2018, these improvements coincided with declines in subject import volumes and increases in prices following Commerce’s initiation of these investigations and the imposition of Section 232 tariffs. We accordingly find that the subject imports had a significant impact on the domestic industry.”* (pp.29-30)
- *“Therefore, based on the current record, nonsubject imports cannot explain the magnitude of the domestic industry’s lost sales and market share losses due to low-priced subject imports through 2017 or the observed declines in the domestic industry’s financial performance over the same period. We also note that, in interim 2018, while nonsubject imports increased their market share and subject imports declined, the domestic industry’s financial performance improved during that period in a market environment that also included Section 232 tariffs.”* (p.32)

**(5) The Commission has compared U.S. prices to subject
prices and considered the magnitude of the difference to
determine whether exports would be deterred by a 25%
tariff.**

Example 1: *Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731- TA-860 (Third Review), [USITC Pub. 4795](#) (June 2018)

- The Commission compared the AUVs for U.S. producers’ U.S. shipments with the AUV for the Japanese industry’s export AUVs. The Commission concluded that, given the magnitude of the difference, the Japanese producers were not likely to be deterred by the 25% tariff. The AUVs for U.S. producers’ U.S. shipments were

40.8% higher than the Japanese AUVs. (at 20-21)

- (6) Countries subject to quotas under Section 232 may be viewed differently by the Commission than countries only subject to the 25% tariff.**

Example 1: *Stainless Steel Bar from Brazil, India, Japan, and Spain*, Inv. Nos. Inv. Nos. 731-TA-678, 679, 681, and 682 (Fourth Review), [USITC Pub. 4820](#) (Sept. 2018)

- The Commission declined to cumulate subject imports from Brazil with other subject imports, finding that in the reasonably foreseeable future the absolute volume and market share of Brazilian imports would decline because they are subject to an absolute quota limit which is less than the level of subject imports from Brazil during each year of the original investigation and of the current POR. (at 16)
- *“Based on the record, in particular the low import levels of stainless steel bar from Brazil that are allowed under the Section 232 trade action and the related decline in the market share of those imports, we find that subject imports from Brazil would likely have no discernible adverse impact on the domestic industry if the order were revoked.*

Accordingly, we do not cumulate subject imports from Brazil with other subject imports for purposes of our analysis in these reviews.” (at 17)

- In contrast, the Commission found that, unlike Brazil, the Section 232 trade action imposes a 25 percent ad valorem tariff on subject imports from each of the other countries, *“with no quota limit to act as an absolute cap on volume.”* (at 19)
- Therefore, the Commission concluded *“[b]ased on the record in these reviews, we do not find that subject imports from Japan, Spain, and India would likely have no discernible adverse impact on the domestic industry if the orders were revoked.”* (at 19)

f) Sunset Reviews

- (1) In sunset reviews, the application of Section 232 tariffs may be considered a change in conditions of competition such that a full review is warranted.**

Example 1: *Clad Steel Plate from Japan*, Inv. No. 731-TA-739 (Fourth Review), [USITC Pub. 4851](#) (Dec. 2018)

- *“The Commission did not receive a response from any respondent*

interested party and determined that the respondent interested party group response to the notice of institution was inadequate. The Commission, however, determined that in light of changes in conditions of competition that had occurred in the U.S. market, such as the imposition of tariffs under Section 232 of the Trade Expansion Act of 1962 (“Section 232”), as amended (19 U.S.C. § 1862), that cover clad steel plate from Japan, it would conduct a full review pursuant to section 751(c)(5) of the Act.” (at 4)

- (2) In some Sunset reviews, the Commission has found that the U.S. market is sufficiently attractive that the Section 232 tariff likely would not, by itself, deter a significant volume of subject imports from entering the U.S. market if the orders were revoked in light of all of the other factors present.**

Example 1: *Circular Welded Carbon Quality Steel Pipe from China, Inv. Nos. 701-TA-447 and 731-TA-1116 (Second Review), [USITC Pub. 4901](#) (June 2019)*

- *“The continued presence of subject imports in the U.S. market, as well as their sharply elevated levels during the latter portions of the period of review, indicates that subject producers continue to have a strong interest in the U.S. market.*

This interest has persisted notwithstanding the imposition of Section 232 tariffs in March 2018. While the available data in the record indicate that, following imposition of these tariffs, monthly subject import volumes declined appreciably, subject imports continued to enter the U.S. market notwithstanding both the Section 232 tariffs and the orders under review. See Domestic Interested Parties’ Response to Notice of Institution at Ex. 2. (at15 and n.66)

Based on the above, in particular the continued and increasing presence of subject imports in the U.S. market even under the discipline of the orders, the size and export orientation of the subject industry, and the existence of third country trade remedy orders on CWP from China, we find that subject producers would likely increase their exports to the United States if the orders were revoked. Accordingly, based on the available information, we conclude that the volume of subject imports would likely be significant, both in absolute terms and relative to U.S. consumption, should the orders be revoked.” (at 15)

Example 2: *Clad Steel Plate from Japan, Inv. No. 731-TA-739 (Fourth Review), [USITC Pub. 4851](#) (Dec. 2018)*

- *“Evidence on the record of this review indicates that the 25 percent tariff on clad steel plate from Japan imposed under the Section 232 trade action likely would not by itself deter a significant volume of subject imports from Japan from entering the U.S. market if the order were revoked.”* (at 19)

Example 3: *Steel Concrete Reinforcing Bar from Belarus, China, Indonesia, Latvia, Moldova, Poland, and Ukraine*, Inv. Nos. 731-TA-873-875, 878-880, and 882 (Third Review), [USITC Pub. 4838](#) (Nov. 2018)

- *“As discussed above, we recognize that section 232 tariffs of 25 percent have been imposed on imports of rebar not otherwise subject to a quota or exempted. Evidence in the record of these reviews indicates that this tariff likely would not by itself deter a significant volume of subject imports from entering the U.S. market if the orders were revoked, in light of the other factors discussed.”* (at 26, n.165)

Example 4: *Tin and Chromium Coated Steel Sheet from Japan*, Inv. No. 731- TA-860 (Third Review), [USITC Pub. 4795](#) (June 2018)

- The Commission compared the AUVs for U.S. producers’ U.S. shipments with the AUV for the Japanese industry’s export AUVs. The Commission concluded that, given the magnitude of the difference, the Japanese producers were not likely to be deterred by the 25% tariff. The AUVs for U.S. producers’ U.S. shipments were 40.8% higher than the Japanese AUVs. (at 20-21)
- The Commission found that the U.S. market is sufficiently attractive to encourage Japanese producers to again export significant quantities of TCCSS in the absence of the antidumping duty order even with the imposition of Section 232 tariffs. (at 21)

III. SECTION 301

A. Background

1. Section 301 of the Trade Act of 1974 provides a statutory method for the United States to address and enforce its rights under trade agreements and to address unfair foreign barriers to U.S. exports.
 - a) 19 U.S.C. § 2411 et seq.: “whether the rights of the United States under any trade agreement are being denied or an act, policy, or practice of a foreign country – (i) violates, or is inconsistent with the provisions of, or otherwise denies benefits to the United States under, any trade agreement, or (ii) is unjustifiable and burdens or restricts United States commerce.”
2. In August 2017, the Trump Administration launched a Section 301

investigation of China's policies on intellectual property, technology, and innovation.

3. **March 22, 2018:** President Trump signed a *Memorandum on Actions by the United States Related to the Section 301 Investigation*. Described by the White House as a targeting of China's "economic aggression," the memorandum identified four broad policies that justified U.S. action against China under Section 301. [The White House said China:](#)
 - a) Uses joint venture requirements, foreign investment restrictions, and administrative review and licensing processes to force or pressure technology transfers from U.S. companies to a Chinese entity
 - b) Maintains unfair licensing practices that prevent U.S. firms from getting market-based returns for their IP
 - c) Directs and facilitates investments and acquisitions which generate large-scale technology and IP transfer to support China's industrial policy goals, such as the *Made in China 2025* (MIC 2025) initiative)
 - d) Conducts and supports cyber intrusions into U.S. computer networks to gain access to valuable business information.
4. **April 6, 2018:** USTR publishes determination and request for comments concerning the proposed Section 301 action (<https://ustr.gov/sites/default/files/enforcement/301Investigations/FRN301.pdf>)
5. In **May 2018**, the United States and China held high-level talks to negotiate a framework agreement to address the U.S. concerns, but on May 29, the White House announced that it planned to move ahead with the Section 301 action.
6. In **June 2018** the Office of the United States Trade Representative identified two tranches of products imported from China that would be subject to tariffs under Section 301. (<https://ustr.gov/sites/default/files/2018-13248.pdf>)
7. **July 6, 2018:** duties of an additional 25% were applied to the 818 items identified in the first tranche and valued at \$34 billion worth of imports.
8. **August 23, 2018:** duties of an additional 25% are applied to 279 line items identified in the second tranche and valued at \$16 billion worth of imports.
9. **September 17, 2018:** the Trump Administration announced that it was identifying a third list of items with an annual trade value of approximately \$200 billion to which a 10% ad valorem duty would be applied on September 24, with that rate increasing to 25% on January 1, 2019.

10. **September 24, 2018:** 10% ad valorem duties went into effect on 5,745 full or partial lines of the original 6,031 tariff lines on the proposed third list
11. **September 24, 2018:** China raised tariffs on \$60 billion worth of imports from the United States
12. **December 2, 2018:** President Trump and Chinese President Xi Jinping agreed to withhold future tariffs on each other's countries for 90 days. Due to this arrangement, President Trump agreed to hold off on raising China tariffs from 10% to 25%. It is unclear exactly what type of resolution is expected to occur, but if the two countries fail to reach a deal, threatened tariffs will be implemented at the end of 90 days, or March 2, 2019.
13. **December 19, 2018:** USTR announces it will delay the increase in the tariff on the third list to 25 percent which was scheduled to occur on January 1, 2019
14. **March 5, 2019:** the delayed increase to 25 percent for products covered by the September 2018 action is delayed until further notice.
15. **May 9, 2019:** the USTR announces it will increase the rate of additional duty from 10 percent to 25 percent for the products covered by the September 2018 action.
16. **May 15, 2019:** the USTR announces that certain products of China that are covered by the September 2018 action and that were exported to the United States prior to May 10, 2019, are not subject to the additional duty of 25 percent, as long as such products are entered into the United States prior to June 1, 2019. Such products remain subject to the additional duty of 10 percent for this interim period.
17. **May 17, 2019:** the USTR published a [request for comments](#) on additional products from China with an annual trade value of \$300 billion (List 4). The proposed list covered essentially all products not currently covered by action in the 301 investigation.
18. **June 10, 2019:** the USTR publishes a notice extending the June 1, 2019 date to June 15, 2019 for the delay in the increase in tariffs from 10 to 25 percent for certain products from China.
19. **August 20, 2019:** the USTR published a notice of modification imposing a 10 percent *ad valorem* duty on the List 4 products.

20. [August 30, 2019](#): the USTR published a notice of modification increasing the *ad valorem* duty to 15 percent on the List 4 products. The duty went into effect for products listed on Annex A of the August 20 notice on September 1, 2019. For products covered by Annex C of the August 20 notice, the duty will go into effect on December 15, 2019.
21. [September 3, 2019](#): the USTR publishes a notice proposing to modify the tariffs by increasing the rate of duty from 25 to 30 percent for products covered by Lists 1, 2, and 3 with an annual trade value of approximately \$250 billion on October 1, 2019.
22. **September 11, 2019**: President Trump [tweets](#) that “as a gesture of good will,” he would move the deadline for the increased tariff from October 1st to October 15th.
23. **October 11, 2019**: according to the Trump administration U.S. and Chinese trade officials have reached a “fundamental agreement” on several trade issues (remarks can be found here: <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-premier-liu-peoples-republic-china-meeting/>).

B. Exclusion Process

1. The USTR created an exclusion process for List 1, List 2, and List 3 tariffs.

- a) For List 1 products, the USTR has published 8 notices announcing granted exclusions which would be effective for one year after publication of the notice:
 - (1) [December 28, 2018](#) - issuing exclusions for approximately 1,000 separate exclusion requests (the excluded 10-digit subheadings cover 918 separate exclusion requests and the 24 specially drafted product descriptions cover approximately 66 separate exclusion requests);
 - (2) [March 25, 2019](#) – issuing exclusions covering approximately 87 separate exclusion requests (the excluded 10-digit subheadings cover 24 separate exclusion requests and the 30 specially drafted product descriptions cover approximately 63 separate exclusion requests);
 - (3) [April 18, 2019](#) - issuing 21 specially prepared product descriptions for exclusion covering 348 separate exclusion requests;
 - (4) [May 14, 2019](#) - issuing exclusions covering approximately 515 separate exclusion requests (the excluded 10-digit subheadings cover 86 separate exclusion requests and the 35

- specially drafted product descriptions cover approximately 429 separate exclusion requests);
- (5) [June 4, 2019](#) - issuing exclusions covering approximately 464 separate exclusion requests (the excluded 10-digit subheadings cover 40 separate exclusion requests and the 88 specially drafted product descriptions cover approximately 424 separate exclusion requests);
 - (6) [July 9, 2019](#) - issuing 110 specially prepared product descriptions for exclusion covering 362 separate exclusion requests;
 - (7) [September 20, 2019](#) - issuing 310 specially prepared product descriptions for exclusion covering 724 separate exclusion requests;
 - (8) [October 2, 2019](#) - issuing 92 specially prepared product descriptions for exclusion covering 129 separate exclusion requests.
- b) For List 2 products, the USTR has published 3 notices announcing granted exclusions which would be effective for one year after publication of the notice:
- (1) [July 31, 2019](#) - issuing 69 specially prepared product descriptions for exclusion covering 292 separate exclusion requests; and
 - (2) [September 20, 2019](#) - issuing 89 specially prepared product descriptions for exclusion covering 400 separate exclusion requests; and
 - (3) [October 2, 2019](#) – issuing 111 specially prepared product descriptions for exclusion covering 382 separate exclusion requests
- c) For List 3 products, the USTR has published 2 notices announcing granted exclusion request which will be effective from September 24, 2018 until the uniform expiration date of August 7, 2020:
- (1) [August 7, 2019](#) - issuing 10 specially prepared product descriptions for exclusion covering 15 separate exclusion requests
 - (2) [September 20, 2019](#) - issuing 38 specially prepared product descriptions for exclusion covering 46 separate exclusion requests.
- 2. On October 18, 2019, the USTR announced that it would begin accepting exclusion requests on October 31, 2019 for Chinese imports subject to the additional 15% tariff that went into effect on September 1, 2019.**
- a) Exclusion requests will be accepted using the USTR online exclusion request processing portal

- b) The last day to request exclusions will be January 31, 2020
- c) Details regarding the application process have not been published in the Federal Register at the time of drafting of this paper, but can be found here: [https://ustr.gov/sites/default/files/enforcement/301Investigations/Procedures for Requests to Exclude Particular Products from the August 2019 Action.pdf](https://ustr.gov/sites/default/files/enforcement/301Investigations/Procedures%20for%20Requests%20to%20Exclude%20Particular%20Products%20from%20the%20August%202019%20Action.pdf)

3. Exclusion Request Process

- a) Exclusion requests can be made by interested persons, including trade associations.
- b) Exclusion requests must be made for a particular product and an exclusion, if granted, will apply to the particular product covered by the exclusion and will not be tied to particular producers and exporters.
- c) Each request must specifically identify a particular product, and provide supporting data and the rationale for the requested exclusion. USTR will evaluate each request on a case-by-case basis, taking into account whether the exclusion would undermine the objective of the Section 301 investigation.

C. Section 301: AD/CVD-specific issues

- 1. The Commission has asked for information from market participants about the effect of Section 301 tariffs in relevant cases, including the following examples:**

Example 1: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Final).

Questionnaires for this investigation are available at https://www.usitc.gov/investigations/701731/2019/refillable_stainless_steel_kegs_china_germany_and/final.htm. The U.S. importers' questionnaire asks:

III-16. **Impact of section 301 duties.**--This question concerns the section 301 investigation and subsequent announcement of additional tariffs that include refillable stainless steel kegs proposed and implemented by the United States in response to Chinese trade practices.

- (a) Did the announcement of the section 301 investigation in June 2018 or the subsequent imposition of tariffs on Chinese-origin products have an impact on the refillable stainless steel keg market?

Yes—Please answer b and c.	No	Don't know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (b) Please indicate the impact of the announcements and subsequent imposition of duties under the section 301 investigation.

Item	Overall increase	No change	Overall decrease	Fluctuate with no clear trend
Demand for U.S.-produced refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand for imports from China of refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Demand for imports from other sources of refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prices for refillable stainless steel kegs in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- (c) Describe the impact on your firm and the overall market for refillable stainless steel kegs. Please identify the magnitude and timing of any effects, and compare your firm's operations/overall market before and after the announcement.

Example 2: *Aluminum Wire and Cable from China*, Inv. Nos. 701-TA-611 and 731-TA-1428 (Final). Questionnaires for this investigation are available at https://www.usitc.gov/investigations/701731/2019/aluminum_wire_and_cable_china/final.htm. The questionnaire for U.S. importers asked:

III-22. **Impact of the section 301 investigation.**--This question concerns the section 301 investigation and subsequent announcement of additional tariffs (including tariffs on imports of AWC) proposed and implemented by the United States in response to Chinese trade practices.

(a) Did the announcement of the section 301 investigation in June 2018 or the subsequent imposition of tariffs on Chinese-origin products have an impact on the AWC market?

Yes—Please fill out table below and answer part (b)	No	Don't know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Item	Response
Impact on your firm ¹	<input type="checkbox"/>
Impact on overall U.S. market ¹	<input type="checkbox"/>
¹ Please identify the magnitude and timing of any effects, and compare your firm's operations/overall market before and after the announcement of the section 301 measures.	

(b) **Assessment of impact of the section 301 investigation.**--Please indicate the impact of the announcements and subsequent imposition of duties under the section 301 investigation.

Item	Increase	No change	Decrease	Fluctuate with no clear trend	Explanation
Overall demand for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supply of AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prices for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raw material costs for AWC in the U.S. market	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Example 3: *Polyester Textured Yarn from China and India*, Inv. Nos. 701-TA- 6512-613 and 731-TA-1429-1430 (Prelim.). Questionnaires for this investigation are available at https://www.usitc.gov/investigations/701731/2018/polyester_textured_yarn_china_and_india/preliminary.htm. The U.S. Producers questionnaire asks:

III-22. **Impact of the section 301 investigation.**--This question concerns the section 301 investigation and subsequent announcement on additional tariffs that include certain polyester textured yarn proposed and implemented by the United States in response to Chinese trade practices.

- (a) Did Federal Register notice on July 17, 2018 requesting public comment on the modified product listing (to include certain polyester textured yarn) and White House announcement on September 17, 2018 regarding the placement of an additional ten percent tariff on polyester textured yarn imported from China under HTS statistical numbers 5402.33.3000 and 5402.33.6000, that took effect on September 24, 2018, impact, or do you anticipate that it will impact, your firm's polyester textured yarn business and/or the U.S. polyester textured yarn market as a whole? (See <https://www.gpo.gov/fdsys/granule/FR-2018-07-17/2018-15090> and <https://www.whitehouse.gov/briefings-statements/statement-from-the-president-4/>)

Yes—Please fill out table below and answer part (b)	No	Don't know
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Item	Response
Anticipated or current impact on your firm ¹	<input type="text"/>
Anticipated or current impact on overall U.S. market ¹	<input type="text"/>
¹ Please identify the magnitude and timing of any effects, and compare your firm's operations/overall market before and after the announcement of the section 301 measures.	

Example 4: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Prelim.). Questionnaires for this investigation are available at https://www.usitc.gov/investigations/701731/2018/refillable_stainless_steel_kegs_china_germany_and/preliminary.htm. The U.S. Importers questionnaire asks:

III-23. **Impact of the section 301 investigation.**--This question concerns the section 301 investigation and tariffs that have been proposed and implemented by the United States in response to Chinese trade practices.

Do you anticipate that the announcement in September 2018 and subsequent implementation of tariff remedies in the section 301 investigation will impact your firm's refillable stainless steel keg business and/or the U.S. refillable stainless steel keg market as a whole?

	No	Yes	Don't know	If yes, describe impact.
Anticipated impact on your firm ¹	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
Anticipated impact on overall U.S. market ¹	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>
¹ Please identify the likely magnitude and timing of any effects.				

2. Analysis of Section 301 tariffs in published Commission opinions

a) Final Opinions

Example 1: *Steel Racks from China*, Inv. Nos. 701-TA-608 and 731-TA-1420 (Final), [USITC Pub. 4951](#) (Sept. 2019)

- *“We note that there were multiple factors affecting interim 2019 data, which only covered the first quarter of 2019. Specifically, Commerce’s preliminary CVD determination, which found margins in excess of 100 percent for multiple Chinese exporters, was issued in these investigations in December 2018; ***, the imposition of Section 232 duties; and additional Section 301 duties on steel racks from China were factors. Further, the fact that our subject import data is based on export data raises timing issues as to when shipments of subject imports were exported and when they were present in the U.S. market. Therefore, we find the interim 2019 data less instructive than the full year data in the POI, given the various factors affecting the data in this short period, including postpetition effects.”* (p.19, n.88)

b) Preliminary Opinions

Example 1: *Ceramic Tile from China*, Inv. Nos. 701-TA-621 and 731-TA-1447 (Prelim.), [USITC Pub. 4898](#) (June 2019)

- *“Joint Respondents argue that the increase in subject import volumes in 2018 resulted from the imposition of Section 301 tariffs, because importers attempted to increase inventories prior to imposition of these duties and their expected increase to 25 percent in January 2019. Joint Respondents’ Br. at 32-33. Regardless of the reason for increases in subject import volumes, we find the volume and increase to be significant based on the available record evidence, as explained above. In any final phase of these investigations, we will further consider the impact of Section 301 tariffs on subject import volumes.”* (p.20-21, n.126)

Example 2: *Refillable Stainless Steel Kegs from China, Germany, and Mexico*, Inv. Nos. 701-TA-610 and 731-TA-1425-1427 (Prelim.), [USITC Pub. 4844](#)

(November 2018)

- The Commission’s report identified section 301 duties as a factor mitigating the responsiveness of supply: *“The main contributing factors to this degree of responsiveness of supply are the availability of unused capacity, and substantial ability to shift shipments from alternate markets. Factors mitigating responsiveness of supply include limited inventories, the inability to shift production to or from alternate products, and the introduction of Section 301 trade actions.”* (at II-3-4)

Example 3: *Aluminum Wire and Cable from China*, Inv. Nos. 701-TA-611 and 731-TA-1428 (Prelim.), [USITC Pub. 4843](#) (November 2018)

- The Commission noted that official import statistics provided by respondent (which may contain out-of-scope merchandise) indicate that the reported volume of imports of AWC from China declined from July to August 2018, and the AUV of these imports increased.
- The Commission found that a one-month change in official import statistics did not provide sufficient basis to draw conclusions that outweigh evidence collected by the Commission covering the POI.
- The Commission also did not collect data on U.S. AWC prices or the domestic industry's financial performance after the end of the POI.
- *"{T}he limited information on the record regarding any effects of the Section 301 tariffs after the POI does not outweigh the substantial evidence of injury by subject imports, including at the end of the POI, and thus provides no basis for altering our finding on this record of the adverse impact that subject imports caused to the domestic industry."* (at 22)

Example 4: *Steel Trailer Wheels from China*, Inv. Nos. 701-TA-609 and 731-TA- 1421 (Prelim), [USITC Pub. 4830](#) (Oct. 2018)

- *"The additional Section 301 tariffs came into effect after the POI concluded and the record closed in the preliminary phase of these investigations."* (at 18-19, n. 97)

c) Sunset Reviews

- (1) **In some Sunset reviews, the Commission has found that the U.S. market is sufficiently attractive that the Section 301 tariffs likely would not deter a significant volume of subject imports from entering the U.S. market if the orders were revoked in light of all of the other factors present.**

Example 1: *Steel Wire Garment Hangers from China*, Inv. No. 731-TA-1123 (Second Review), [USITC Pub. 4945](#) (Aug. 2019)

- *"We acknowledge that imports of SWG hangers from China are currently subject to section 301 tariffs, but note the record does not indicate that exports to the United States likely would be deterred in the event of revocation in light of the size of the U.S. market and the lack of availability of other export markets."* (at 15, n.84)

Example 2: *Utility Scale Wind Towers from China and Vietnam*, Inv. Nos. 701-TA-486 and 731-TA-1195-1196 (First Review), [USITC Pub. 4888](#) (April 2019)

- *"There is no information in the record that indicates that Section 301*

tariffs are likely to curtail significantly exports of wind towers from China in the reasonably foreseeable future, in light of the other factors discussed above.” (at 26)

Example 3: *Crystalline Silicon Photovoltaic Cells and Modules from China*, Inv. Nos. 701-TA-481 and 731-TA-1190 (First Review), [USITC Pub. 4874](#) (March 2019)

- *“We have also examined whether the Section 201 and Section 301 tariffs together provide sufficient disincentive for Chinese producers to export product to the U.S. market upon revocation of the orders. As explained above, imports from all sources are currently subject to the Section 201 tariffs of 25 percent ad valorem, with the exception of an annual volume of 2.5 GW of cells. These tariffs will decline to 20 percent on February 7, 2020 and 15 percent on February 7, 2021.169 Imports of CSPV cells and modules from China are subject to an additional 25 ad valorem tariff pursuant to the Section 301 investigation. The pricing data on the record show that in 2018, CSPV module prices in the United States were substantially higher than those in China, demonstrating that the U.S. market is still an attractive export destination despite the Section 201 and 301 tariffs.” (at 27)*
- *“The antidumping and countervailing duties imposed under the CSPV I orders are subject to annual reviews and recalculation by Commerce to ensure that they address actual levels of dumping and subsidization. Section 201 and 301 tariffs are not subject to such review or modification, and producers therefore could lower prices without the possibility of incurring higher duties. Additionally, unlike the antidumping duty statute, neither the Section 201 nor Section 301 tariffs have mechanisms to account for duty absorption. Given the aggressive pricing exhibited by the subject imports with the orders in place, and the incentives discussed above that subject producers have to increase export shipments notwithstanding the existence of the additional tariffs, we find that the Section 201 and 301 tariffs are unlikely in themselves to prevent aggressive pricing by subject producers or prevent the domestic industry from experiencing adverse price effects.” (at 31)*

Example 4: *Tapered Roller Bearings from China*, Inv. No. 731-TA-344 (Fourth Review), [USITC Pub. 4824](#) (Sept. 2018)

- The Commission noted that available evidence on the record of the review *“indicates that the 25 percent tariff on subject imports imposed under the Section 301 trade action likely would not by itself deter a significant volume of subject imports from entering the U.S. market if the order were revoked, in light of the other factors discussed above.”*

(at 28-29, n. 201

(2) In another, the section 301 tariffs became effective too late in the period for the Commission to consider the impact of the tariffs:

Example 1: *Silicomanganese from China and Ukraine*, Inv. Nos. 731-TA-672-673 (Fourth Review), [USITC Pub. 4845](#) (Nov. 2018)

- The Commission noted that additional “*duties on silicomanganese from China were imposed in September 2018 pursuant to Section 301 of the Trade Act. As the duties were imposed late in the period of review and after the period for which the Commission collected data, it is too soon to determine whether they have affected the Chinese industry’s incentive to export silicomanganese to the United States.*” (at 26)
- But see Commissioner Broadbent’s dissenting opinion: “*The initial section 301 tariff rate on or after September 24, 2018 is 10 percent ad valorem (13.9 percent when added to the MFN rate of 3.9 percent) with an increase to 25 percent ad valorem on January 1, 2019 (28.9 percent when added to the MFN rate). Eramet argues that there is significant uncertainty about the scope, duration, and ultimately the impact of the section 301 tariffs. The section 301 tariff on silicomanganese from China is currently in force, however, and any assertion made by Eramet that the tariff may be removed or mitigated in the reasonably foreseeable future is speculative.*” (at 40 n.260)

3. Request for Consultations at the WTO by China

- a) On August 23, 2018, China requested consultations with the United States regarding the Section 301 tariff measures. Documents can be found here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds565_e.htm
- b) On August 31, 2018, the United States accepted the request from China to enter into consultations.
- c) On September 2, 2019, China requested consultations with the United States regarding the Section 301 tariffs measures relating to the List 4 action. Documents can be found here: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds587_e.htm
- d) On September 16, 2019, the United States accepted the request from China to enter into consultations.