

# National Security Tariff Investigation Targets Steel-Based Components of Electrical Transformers

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The Commerce Department on May 4, 2020, announced a [new investigation](#) under Section 232 of the Trade Expansion Act of 1962, this time examining whether “laminations for stacked cores for incorporation into transformers, stacked and wound cores for incorporation into transformers, electrical transformers, and transformer regulators are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.”

This investigation is the sixth one that the Trump Administration has initiated under Section 232. It follows investigations into imports of steel and aluminum, both of which resulted in tariffs, and also of autos and auto parts, uranium, and titanium sponge, for each of which the President has thus far declined to impose trade remedies.

Section 232 is a powerful tool. It gives the President broad discretion “to adjust the imports of the article and its derivatives so that the such imports will not threaten to impair the national security.” “National security” is described expansively, and closely linked to economic security.

Because Section 232 includes few constraints on the executive, it remains controversial. It survived a recent constitutional challenge, as we explained in this [article](#). The U.S. Court of Appeals for the Federal Circuit upheld the constitutionality of the law, but the plaintiff in that case, the American Association for International Steel, has [petitioned](#) the Supreme Court for review. A response to the certiorari petition is due on May 26, 2020.

As a process matter, the Commerce Department’s announcement marks the start of a 270-day investigation conducted by the Department’s Bureau of Industry and Security (“BIS”).

Regulations require BIS to consider the following factors:

- quantity of the article in question;
- domestic production needed for projected national defense requirements;
- capacity of domestic industries to meet projected national defense requirements;
- existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense;
- growth requirements of domestic industries to meet national defense requirements and the supplies and services including the investment, exploration and development necessary to assure such growth;

- impacts of foreign competition on the economic welfare of any domestic industry essential to U.S. national security; and
- displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

BIS will also consider “other relevant factors that are causing or will cause a weakening of [the] national economy.”

Regulations require the Commerce Department to notify the Department of Defense of an investigation, but not necessarily to “coordinate” with the Secretary of Defense. Indeed, the two departments can reach opposing conclusions about appropriate responses. During the Section 232 steel investigation, then-Secretary Jim Mattis sent a [letter](#) to the Commerce Department concurring that “the systematic use of unfair trade practices to intentionally erode our innovation and manufacturing industrial base poses a risk to our national security,” but cautioning against blunt trade remedies. Mattis reported that “the U.S. military requirements for steel and aluminum each only represent about three percent of U.S. production. Therefore, DoD does not believe that the findings in the reports impact the ability of DoD programs to acquire the steel or aluminum necessary to meet national defense requirements.” And consistent with a key line of effort in the National Defense Strategy, Mattis emphasized that “DoD continues to be concerned about the negative impact on our key allies regarding the recommended options [i.e., tariffs] within the reports.” He recommended targeted action focused on “the underlying issue of Chinese transshipment,” not broad tariffs that could damage U.S. relationships with close allies like Canada.

The regulations require BIS to provide an opportunity for industry to submit comments, and they allow BIS to convene a public hearing. Although the regulations also permit Commerce to “vary or dispense with any or all of the procedures” in certain emergency situations, we do not expect Commerce to invoke this exception. The announcement explicitly states that Commerce “will provide the opportunity for public comment.”

Despite the generous statutory deadline, industry should prepare for rapid action. The Commerce Department is allowed to take up to 270 days for the investigation, but it is not required to do so. With the presidential election less than 190 days away, the Administration may have strong political incentives to accelerate this investigation. In 2018, a bipartisan group of “steel-state Senators” sent a [letter](#) to the President asking him to include precisely these materials in the package of steel-related trade remedies. The states they represent – Ohio and Pennsylvania – are key electoral battlegrounds, and the President may view this investigation as an opportunity to deliver economic benefits to voters in those states.

Covington has significant experience advising companies on Section 232. Our team includes former senior trade and defense officials who are well placed to represent clients in these matters. We would be pleased to help you develop and execute a strategy to respond to this latest investigation.

If you have any questions concerning the material discussed in this alert, please contact the following members of our International Trade and Public Policy and Government Affairs practices:

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