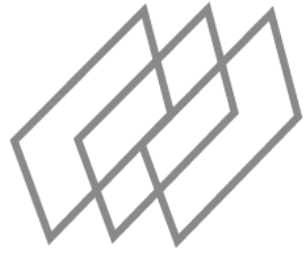




WITA-GWU INTENSIVE TRADE SEMINAR

September 5 and 6, 2018



msk



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First Line of Defense

- Harmonized Tariff Schedule
 - 6 v 10 digit level / Chapters 98 and 99
- Quotas, licenses, permits – non-tariff barriers
- Industries protected in U.S. -
 - Steel
 - Footwear
 - Agriculture
 - Automobile
 - Textiles and wearing apparel



Citations

Section 232 -

Trade Expansion Act of 1962

Sections 201, 301 and 421-

Trade Act of 1974

Section 337 and 753 - Trade Act of 1930



Multiple Tariffs

- 232 - Steel – final - 25%;
- 232 - Aluminum – final - 10%;
- 301 - China List 1/Annex A – final – 25% - 7/6/18
- 301 - China List 2/Annex B – final – 25% - 8/23/18
- 301 - China List 3/Annex C – notice/comment – 10% v. 25% - deadline 9/6/18
- 232 - Autos and auto parts – notice/comment period closed – 20% is the rumored amount



Retaliation

- Canada
- China**
- European Union
- India
- Japan
- Mexico
- Norway
- Russia
- Switzerland
- Turkey

** 232 and 301

Section 232 - Aluminum and Steel Tariffs and Quotas



What is Section 232?

- Investigation conducted by the Bureau of Industry and Security (BIS), Department of Commerce to determine the effect of imports on national security (economic security).
- If the President agrees with the agency's findings that a category of imports threatens national security, that level of imports may be adjusted by raising tariffs or imposing quotas.



Aluminum Tariff Items – 10%

(a) Unwrought aluminum (HTS 7601); (b) aluminum bars, rods, and profiles (HTS 7604); (c) aluminum wire (HTS 7605); (d) aluminum plates, sheets, strips, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS classifications.

9903.85.01, HTSUS, added



Steel Tariff Items – 25%

(i) 7206.10 through 7216.50, (ii) 7216.99 through 7301.10, (iii) 7302.10, (iv) 7302.40 through 7302.90, and (v) 7304.10 through 7306.90, including any subsequent revisions to these HTS classifications.

– 9903.80.01, HTSUS, added



Countries of Origin Effected by Additional Duties

- ***Aluminum***
 - All countries of origin except Argentina and Australia.
- ***Steel***
 - All countries of origin except Argentina, Australia, Brazil, and South Korea.
- As of June 1, 2018



Countries of Origin Effected by Absolute Quotas

- ***Steel***
 - Argentina, Brazil, and South Korea.
- ***Aluminum***
 - Argentina.
- As of June 1, 2018

Important Facts

- Products of United States origin are not covered by the 232 measures.
- GSP and AGOA-eligible goods subject to 232 duties or quotas may not receive duty preference (including imports from Argentina and Brazil).
- Other trade preferences may be claimed, but the 232 duties must be paid on those goods.



More Important Facts

- 232 duties are based on the full value of goods imported under subheading 9802.00.60 (metals).
- Drawback of 232 duties is not available.
- Goods covered by entry for immediate transportation are subject to rates in effect when the immediate transportation was accepted or when entered for consumption.
- Antidumping and countervailing duties may also apply to merchandise.



Foreign Trade Zone Option

- If subject to 232 duties, steel or aluminum goods, except those eligible for admission under “domestic status,” admitted into FTZ on or after March 23, 2018, must be admitted as “privileged foreign status” and will be subject to any *ad valorem* rates of duty upon entry for consumption.
- Likewise, goods admitted under “privileged foreign status” prior to March 23, 2018, will be subject to any *ad valorem* rates of duty related to the classification imposed by the Proclamations upon entry for consumption.
- Aluminum or steel goods are not subject to 232 duties upon entry for consumption merely by reason of manufacture in an FTZ. However, articles admitted in “privileged foreign status,” shall retain that status.



Section 232 Exclusions



Products May be Excluded

- The Secretary of Commerce may grant exclusions from the duties, “upon request of affected parties if the steel or aluminum articles are determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality or based upon specific national security considerations.”

– 83FR12106



Who May Apply (Steel)?

- “Only individuals or organizations using steel articles identified in Proclamation 9705 in business activities (e.g., construction, manufacturing, or supplying steel to users) in the United States may submit exclusion requests with respect to that Proclamation.”

– 83FR12106



Who May Apply (Aluminum)?

- “Only individuals or organizations using aluminum articles identified in Proclamation 9704 in business activities (e.g., construction, manufacturing, or supplying aluminum to users) in the United States may submit exclusion requests with respect to that Proclamation.”

– 83FR12106



Basis for Exclusion

- Exclusion may be granted:
 - if the steel or aluminum articles are not produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality, or
 - based upon specific national security considerations.
 - 83FR12106



Only You Get the Benefit!

- “Approved exclusions will be made on a product basis and will be limited to the individual or organization that submitted the specific exclusion request, unless Commerce approves a broader application of the product based exclusion request to apply to additional importers.”
 - 83FR12106



Now What?

- You may submit an exclusion request for a steel or aluminum product already approved and reference the previously approved exclusion. Commerce may consider a previously approved exclusion when reviewing your request.
- You may submit a request for exclusion where a previous request for the product was denied or is no longer valid. The previous request may have been denied because it did not adequately demonstrate the criteria were met. Make sure to submit new or different information to meet the criteria.

– 83FR12106



How to File a 232 Aluminum Exclusion Request

- If your organization meets the criteria, go to <https://www.bis.doc.gov/index.php/232-aluminum>:
- (1) Download the *Request for Exclusion from Remedies from the Section 232 National Security Investigation of Imports of Aluminum* (Exclusion Request) form.
- (2) Complete the form using Microsoft Excel and save on your computer.
- (3) Go to Docket Number BIS-2018-0002, complete the required information, and upload the completed Exclusion Request form.
- A separate Exclusion Request must be submitted for each distinct type and dimension of aluminum product to be imported.



More Re 232 Aluminum Exclusion Requests

- For an exclusion request to be considered, the requester must provide factual information on 1) the single type of aluminum product they require using a 10-digit HTSUS code, including its specific dimensions; 2) the quantity of product required (stated in kilograms) under a **one-year exclusion**; 3) a full description of the properties of the aluminum product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.



Resources

- BIS Process Guideline for Aluminum
<https://www.bis.doc.gov/index.php/232-aluminum>
- Review exclusions – go to <https://www.regulations.gov/> and search for “Section 232 exclusion requests aluminum”
- Tips and Help Desk file:///C:/downloads/BIS-2018-0002-0010.pdf



How to File a Steel 232 Exclusion Request

- If your organization meets the criteria, go to <https://www.bis.doc.gov/index.php/232-steel>:
- (1) Download the *Request for Exclusion from Remedies from the Section 232 National Security Investigation of Imports of Steel* (Exclusion Request) form.
- (2) Complete the form using Microsoft Excel and save a copy on your computer.
- (3) Go to Docket Number BIS-2018-0006, complete the required information, and upload the completed Exclusion Request form.
- A separate Exclusion Request must be submitted for each distinct type and dimension of steel product to be imported.



More re Steel Exclusion Requests

- For an exclusion request to be considered, the requester must provide factual information on 1) the single type of steel product they require using a 10-digit HTSUS code, including its specific dimensions; 2) the quantity of product required (stated in kilograms) under a **one-year exclusion**; 3) a full description of the properties of the steel product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.



Resources

- BIS Process Guideline for Steel
<https://www.bis.doc.gov/index.php/232-steel>
- Review exclusions – go to
<https://www.regulations.gov/> and search for
“Section 232 exclusion requests steel”
- Tips and Help Desk file:///C:/downloads/BIS-2018-0002-0010.pdf



Review and Decision

- All exclusion requests will be reviewed for completeness.
- Only fully completed exclusion requests will be considered and posted for public review.
- All exclusion requests will be made available for public inspection and copying.
- Any exclusion granted dates back to the original date posted on regulations.gov.



Objections

- You may file an objection to someone else's exclusion request, or someone may file an objection against yours;
- Instructions are with the exclusion request guidelines;
- The objection must include factual information on 1) the products that the objectors manufactures in the United States, 2) the production capabilities at manufacturing facilities operated in the United States; and 3) the availability and delivery time of the products being manufactured relative to the specific product subject to an exclusion request.



More About Objections

- The objection must provide specific information about how the product the objecting company can provide is comparable to the steel or aluminum product the subject of the exclusion request, such as 1) suitability for the application identified by the exclusion requestor, and 2) a full technical description of the properties of the product manufactured relative to the specifications provided in the exclusion request, including information on dimensions, strength, toughness, ductility, surface finish, coatings, and other relevant data.



Section 301 Tariffs



Countries of Origin Effected by Additional Duties

- ***The current 301 case imposes tariffs only on goods originating in China***
- ***The key is the country of origin, not the country of exportation***
- ***On the other hand, China imposes its retaliatory tariffs on goods shipped from the U.S.***



What is Section 301?

- Section 301 of the Trade Act of 1974 provides the authority to enforce trade agreements, resolve trade disputes, and open foreign markets to U.S. goods and services.
- It is the principal statutory authority under which the U.S. may impose trade sanctions on foreign countries that either violate trade agreements or engage in other unfair trade practices.
- When negotiations to remove the offending trade practice fail, the U.S. may take action to raise import duties on the foreign country's products as a means to rebalance lost concessions.



More About Section 301

- Section 301 of the Trade Act of 1974 was enacted at 19 U.S.C. 2411 and provides for mandatory action under § 2411(a)
- (1) If the United States Trade Representative determines ... that— ...
- (B) an act, policy, or practice of a foreign country—...
- (ii) is unjustifiable and burdens or restricts United States commerce;



Affirmative Findings

- In light of affirmative findings, pursuant to 19 U.S.C. 2411(c)(1)(B), USTR is empowered to: “... impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as the Trade Representative determines appropriate;...”



Outcome of the USTR Investigation

- Three lists of tariff lines/products on which additional duties have or may be levied were compiled – may be a 4th???
- Sectors targeted for the additional tariffs “include industries such as aerospace, information and communication technology, robotics, and machinery.”



Information Sources

- Presidential Proclamations
- U.S. Trade Representative
- Federal Register
- Customs and Border Protection



Why?

- These tariffs are intended to combat China's "industrial plans, such as 'Made in China 2025.'" The tariffs, therefore, are intended to "target products that benefit from China's industrial plans while minimizing the impact on the U.S. economy."
- Report of USTR findings
<https://ustr.gov/sites/default/files/Section%20301%20FINAL.PDF>



Made in China 2025

- Advanced rail
- Agricultural machinery
- Aviation equipment
- Biomedicine
- Electrical equipment
- High-end numerical control machinery
- High-tech maritime vessel manufacturing
- Medical devices
- Next generation IT
- New energy vehicles
- Robotics

Lists 1 and 2

- List 1 – Appendix A - \$34 billion
<https://ustr.gov/sites/default/files/enforcement/301investigations/List%201.pdf>
 - 818 tariff lines, additional 25% duty, effective July 6, 2018
- List 2 – Appendix B - \$16 billion
<https://ustr.gov/sites/default/files/enforcement/301investigations/List%202.pdf>
 - 279 tariff lines, additional 25% , effective August 23, 2018



List 3

- List 3 –Appendix C - \$200 billion
https://ustr.gov/sites/default/files/301/2018-0026%20China%20FRN%207-10-2018_0.pdf
 - 6,000 tariff lines, additional 10% or 25% duty, currently undergoing notice and comment – deadline to file is September 6, 2018
 - Products include meat, fish, foods; tobacco; chemicals; rubber goods; leather (not footwear); luggage and bags; some apparel items; wood articles (including paper); textiles; carpets; cutlery; metals; machinery; motor vehicle parts; and others.



List 1/Annex A - Exclusion Process



Timeline and Features

- The exclusion request period expires on October 9, 2018.
- Following posting of the filed request on regulations.gov, the public will have 14 days to file responses to any request for product exclusion.
- After the close of the 14 day response period, interested persons will have an additional 7 days to reply to any objections/comments filed.



More About the List 1/Annex A Exclusion Process

- Exclusions will be effective for one year upon the publication of the exclusion determination in the Federal Register, and will apply retroactively to July 6, 2018.
- Because exclusions will be made on a product basis, **a particular exclusion will apply to all imports of that product**, regardless of whether the importer filed a request.
- Customs and Border Protection will apply the exclusions at the product level.



What Must be Included

- Identification of the product in terms of physical characteristics (e.g., dimensions, material composition, or other characteristics) that distinguish it from other products within the covered 8-digit subheading.
- USTR will not consider requests that identify the product in terms of the identity of the producer, importer, ultimate consumer, actual use or chief use, or trademarks or tradenames – all criteria must be subject to public disclosure.



More About What Must be Included

- Must file public information, but may also file business proprietary information.
- The 10 digit subheading of the HTSUS applicable to the particular product requested for exclusion.
- Requesters also may submit information on the ability of Customs and Border Protection to administer the exclusion.



More About What Must be Included

- Requesters must provide the annual quantity and value of the Chinese-origin product purchased in each of the last three years.
- Trade associations may provide such information based on members' data.
- If precise annual quantity and value information are not available, the requestor must provide an estimate and explain the basis for the estimation.



Rationale

- Address this key factor first:
Whether the particular product is available only from China.
 - In addressing this factor, requesters should address specifically whether the particular product and/or a comparable product is available from sources in the United States and/or in third countries



Other Considerations

- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requester or other U.S. interests.
- Whether the particular product is strategically important or related to “Made in China 2025” or other Chinese industrial programs. Requesters may also provide any other information or data they consider relevant to an evaluation of the request.
- For detailed instructions, including filing via regulations.gov, see <https://ustr.gov/sites/default/files/enforcement/3011investigations/FRN%20exclusion%20process.pdf>



List 2/Annex B Timeline

- August 23, 2018 – 25% tariff was imposed on 279 products.
- Exclusion requests must be filed by October 9, 2018.



List 3/Annex C Timeline

- Request to appear at hearing – July 27, 2018
- Public hearing – August 20 - 27, 2018
- Submit written comments – September 6, 2018
- Post-hearing rebuttal comments – September 6, 2018
- Procedure and Instructions – see 83 FR 28710
- <https://www.gpo.gov/fdsys/pkg/FR-2018-06-20/html/2018-13248.htm>



List 3/Annex C Comments

- USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments in sections D and F below. The docket number is USTR-2018-0026.
- A significant number of items were removed from the List 1, and not all were added to List 2.
- All submissions must be in English and sent electronically via www.regulations.gov. To submit comments via www.regulations.gov, enter docket number USTR-2018-0026.



Instructions for Submitting List 3/Annex C Comments

- For detailed instructions regarding the comment procedure, such as how to file and what to include, see
https://ustr.gov/sites/default/files/301/2018-0026%20China%20FRN%207-10-2018_0.pdf



Auto and Auto Parts / 232



232 and Autos/Parts

DOC-2018-0002

- Cars
- SUVs
- Vans
- Light trucks, and
- Automotive parts



Timeline

- Public hearing - July 19 and 20, 2018
- No other dates published
- Likely to know the results in 30 to 60 days



Section 201



What is Section 201?

- Domestic industries seriously injured or threatened with serious injury by increased imports may petition the International Trade Commission (ITC) for import relief
- May be initiated by House Ways and Means, Senate Finance Committee or at request of the USTR or the ITC
- Does not require a finding of an unfair trade practice, as do the antidumping and countervailing duty laws



Desired Outcome

- Facilitate “positive adjustment” of a domestic industry to import competition:
 - the industry may compete successfully with imports after termination of the measure, or
 - resources may be transferred to other productive pursuits; and
 - dislocated workers are able to transition productively



Basis

- Does not require a finding of an unfair trade practice, like the antidumping and countervailing duty laws and section 337 of the Tariff Act of 1930.
- Injury requirement under section 201 is more difficult than those of the unfair trade statutes.
- The injury or threatened injury must be "serious" and the increased imports must be a "substantial cause" (important and not less than any other cause) of the serious injury or threat of serious injury.



Process

- Upon receipt of a petition, the ITC determines whether increased import quantities are a substantial cause of serious injury to U.S. industry producing a like article or one directly competitive with the imported article.
- Following an affirmative determination, the ITC makes a recommendation to the President that relief would prevent or remedy the injury and facilitate industry adjustment to import competition
- President makes the final decision whether to provide relief, and, if so, the form, amount and duration.



Form of Relief

- Relief options are a tariff increase, quantitative restrictions, or orderly marketing agreements.

Follow Up

- ITC periodically reports on developments in the industry during the relief period.
- The President may ask the ITC to advise the probable economic effect on the industry of reduction, modification or termination of relief.
- At the end of any relief period, the ITC reports to the President and Congress on the effectiveness of the relief action in facilitating the positive adjustment of the domestic industry to import competition.
- See section 201 of the Trade Act of 1974, 19 U.S.C. 2251



Recent Section 201 Case



Large Residential Washing Machines

- Between 2012 to 2016, imports of washers increased dramatically. By 2016, the domestic producers were running multimillion dollar net operating losses from loss of market share.
- Actions:
 - In 2011, Whirlpool filed a petition with Commerce asserting washer imports from Korea and Mexico were dumped and subsidized.



More About Washing Machines

- In 2013, Commerce issued antidumping and countervailing duties on imported washers benefitting from unfair trading practices.
 - Korean producers LG and Samsung shifted production to China.
- In 2015, Whirlpool sought relief after washer imports from China sharply increased.
- In 2017, Commerce issued an antidumping order on washers from China.
 - This led to another shift in production, this time to Thailand and Vietnam.



Even More About Washing Machines

- Later in 2017, Whirlpool requested the ITC initiate an investigation under Section 201 covering the years 2012-2016 to determine whether increased imports were a substantial cause of serious injury to domestic producers
- In 2017, Samsung and LG announced plans to build factories in South Carolina and Tennessee.



201 Determination re Washers

- ITC determined that increased washer imports are a substantial cause of serious injury and recommended global safeguard tariffs on large residential washing machines.
- After reviewing comments from industry and consultation with the interagency Trade Policy Staff Committee, USTR recommended and the President chose to take action by applying tariff-rate quotas on washers for a period of three (3) years.



Section 421



What is Section 421?

- Similar to 201, but focused only on imports from China
- Safeguard action (measures to address import relief) implemented under Section 201 of the Trade Act of 1974
- Compliant with GATT Article XIX and the WTO Safeguards Agreement



2009 Tire Safeguard

- Section 421 implements the transitional safeguard contained in Section 16 of China's Protocol of Accession to the WTO
- Petition filed by the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union under section 421



Additional Duty Imposed

- President imposed additional duties on imports of certain passenger vehicle and light truck tires from China for a period of three (3) years to remedy the market disruption caused by those imports, as determined by the ITC.



China Requested Consultations

- China complained to the WTO the additional duties were not consistent with the GATT, the Agreement on Safeguards, and China's Protocol of Accession
- China asserted that
 - various elements of the ITC's determination regarding market disruption were inconsistent with the Protocol of Accession,
 - the level and duration of the additional duties were inconsistent with the Protocol of Accession, and
 - the section 421 definition of significant cause was not consistent with the Protocol of Accession.



WTO Actions

- The WTO established a panel in January 2010 to hear this dispute.
- Meetings were held with the parties in June and July 2010.
- The panel found in favor of the United States with respect to all of China's claims.
- Both sides had the right to appeal within 60 days.



Fate of the WTO Appellate Body?



Section 753



Antidumping

- Antidumping (ADD) occurs when a foreign manufacturer sell goods in the United States at less than fair value, causing injury to U.S. industry. ADD cases are company specific - producer - exporter - importer; the duty is calculated to bridge the gap back to a fair market value.



Countervailing

- Countervailing (CVD) cases are established when a foreign government provides subsidies, such as tax breaks to manufacturers that export goods to the U.S., enabling manufacturers to sell goods cheaper than domestic manufacturers. CVD cases are country specific, the duties are calculated to duplicate the value of the subsidy.



Preliminary Phase Investigations (Imports Sold at Less Than Fair Value / Subsidized Imports)

- Investigation begins after the filing of a petition with ITC and Commerce
- ITC conducts a preliminary phase injury investigation as to whether there is a "reasonable indication" that an industry actually is or is threatened with material injury, or whether the establishment of an industry is materially retarded by reason of imports under investigation
- Depending on the finding, the investigation is terminated or continued



Final Phase Investigations (Imports Sold at Less Than Fair Value and Subsidized Imports)

- ITC conducts the final phase of the injury investigation
- ITC determines whether an industry in the U.S. actually is or is threatened with material injury, or whether the establishment of an industry in the U.S. is materially retarded, by reason of imports Commerce has determined to be sold in the U.S. at less than fair value or are subsidized
- If the determination is affirmative, the Secretary of Commerce issues an antidumping and/or a countervailing duty order, which is enforced by Customs and Border Protection



Appeals

- ITC determinations may be appealed to the Court of International Trade or, in cases involving Canada and/or Mexico, to a binational panel under the auspices of the North American Free Trade Agreement
- ITC must conduct a sunset review no later than five years after an initial antidumping or countervailing duty order is issued to determine whether revoking the order would likely lead to continuation or recurrence of dumping or subsidies and material injury, per the Uruguay Round Agreements Act, approved in late 1994



Enforcement Headaches

- Circumvention
- Misdescription
- Smuggling
- Fraud



Questions?





Thank You



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