

SECURING NORTH AMERICAN STEEL PRODUCTION AND PRODUCTS THROUGH A UNIFIED POSITION ON SECTION 232 OF NAFTA

Submitted by the Sault Ste. Marie Chamber of Commerce, co-sponsored by the Hamilton Chamber of Commerce and the Windsor Chamber of Commerce.

Issue

The United States review of Section 232 of the Trade Expansion Act of 19621 and the potential result of the investigation of the Steel Industry as a “core industry’ and “critical element” to US national security poses to have a significant impact on the Canadian steel industry and the 22,000 direct jobs that it generates.

“Steel is critical to both our economy and our military. This is not an area where we can afford to become dependent on foreign countries.”

— President Trump

Background

On April 20, 2017, the Trump Administration announced the initiation of an investigation under Section 232 of the Trade Expansion Act of 19621 to assess the impact of steel imports on U.S. national security.

If the US Trump administration acts without similar and coordinated action from Canada, at minimum the position of steel importation from non-market economies as a threat to our national economy, Canada stands to be the recipient of those steel imports, previously destined to the US market. The resulting economic impact would be devastating to many communities throughout Canada.

The “Section 232” investigation reflects another step towards implementation of the Trump Administration’s assertive “America First” international trade agenda, and provides further indication of the president’s intent to use all available mechanisms to promote robust trade enforcement. The presidential memorandum announcing the investigation characterizes the U.S. steel industry as a sector in crisis, plagued by excess capacity that largely originates from “foreign government subsidies and other unfair practices.”

Under Section 232, Secretary of Commerce Wilbur Ross will have 270 days to determine whether steel is being “imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.” Based on the Commerce Secretary’s findings, the President must issue a report to Congress and may take such actions as he deems necessary to “adjust” steel imports “so that such imports will not threaten to impair the national security.”

Regarding the Investigation Pursuant to Section 232 (B). What it will include is consideration of, “one, the domestic production needed for our projected national defense requirements; two, the domestic industry’s capacity to meet those requirements; third, the related human and material resources; fourth, the importation of goods in terms of their quantities and use; fifth, **the close relation of national economic welfare to national security; sixth, the loss of skills and investment, substantial unemployment and decrease in government revenue; and finally, the impact of foreign competition on specific domestic industries and the impact of displacement of a domestic product by excess of import.** “

Consistent with his objectives. “Steel imports, despite the activities that we’ve already had in countervailing duties and anti-dumping, have continued to rise, and they’ve continued to rise despite repeated Chinese claims that they were going to reduce their steel capacity when instead they have actually been increasing it consistently. “

Steel, the memorandum indicates, is a “core industry” and a “critical element” of the U.S. manufacturing and defense industrial base. However, according to the memorandum, existing trade enforcement tools, including antidumping and countervailing duty (“AD/CVD”) orders currently imposed on steel imports, have not been sufficient to mitigate the detrimental impacts of “unfairly traded imports” on U.S. steel producers.

Without executive action, the current circumstances may create a national security risk for the United States “by undermining the ability of American steel producers to continue investment and research and development, and by reducing or eliminating the jobs needed to maintain a pool of skilled workers essential for the continued development of advanced steel manufacturing.”

Canada has been as impacted by the factors above as the United States. As such, Canada has been an active participant with the USA and other countries in addressing global steel issues. The Previous U.S. Action on Global Steel Issues by the Obama Administration also sought to address global steel trade issues. Last November, government officials discussed steel issues with their Chinese counterparts during the Joint Commission on Commerce and Trade (“JCCT”) meetings in Washington, D.C. A press report of that November 21-23 meeting states that “[e]xcess capacity and structural problems in steel and other industries is a global challenge which requires collective responses.” Pursuant to these JCCT discussions, the Global Forum on Steel Excess Capacity was launched in December 2016.

Even before the JCCT, U.S. agencies had engaged in fact-finding with respect to global steel trade issues. In April 2016, U.S. agencies convened public hearings concerning “Policy Recommendations on the Global Steel Industry Situation and the Impact on U.S. Steel Industry and Market.” The United States has also engaged internationally on steel capacity issues. On April 11, 2016, the U.S., Canada, and Mexico released a joint statement calling for effective and immediate commitments to address “global steel excess capacity.” Shortly thereafter, on April 18, 2016, the Belgian government and the OECD hosted a meeting in Brussels of senior officials and private sector representatives from the U.S., China, and around 30 other countries to address excess capacity in the steel sector. The United States has issued 125 (26 outstanding) disputes at the WTO and Canada to a far less degree, with currently none outstanding.

TIME IS OF THE ESSENCE

Within 270 days (by January 2018), the Department of Commerce must issue a report to the president summarizing its findings from the investigation and recommended actions.

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- Following the report from Commerce, the President has 90 days (by April 2018) to determine how to respond to any findings that imports threaten national security.
- The President is empowered to take a variety of actions in response to such findings, including setting tariffs, quotas, tariff rate quotas, or other exclusion orders.
- There is no limit to potential tariffs that may be imposed.

Implications for Canada are severe.

- The Trump administration's emphasis on trade enforcement and s.232 remedies (possibly tariffs or tariff rate quotas) will mean American companies reliant on imports will seek alternate domestic sources of goods.
- Canadian businesses who use Chinese steel or other foreign steel in their supply chains may suffer disruptions if their final destination is the United States market.
- Supply Chains will be disrupted and steel destined for the United States is likely to be diverted to Canada.
- Operating companies may need to plan for changes in suppliers and vendors, and investors should closely examine the import profiles of target companies.
- While the investigation does not target a particular country, the impact is likely to be felt most strongly with respect to steel from China, especially steel that has been further manufactured into value-added products in third countries. Indeed, the plurality (28) of the 152 steel-related AD/CVD orders in place have been imposed on Chinese steel products.
- Sourcing from China or exporters in third countries that rely on Chinese steel in particular, will continue to entail heightened risk of tariffs and U.S. import compliance scrutiny, in addition to the existing Foreign Corrupt Practices ("FCPA") and other international risks that often accompany business in China.
- **While the current investigation relates to steel imports, the presidential memorandum notes that steel is one of several "core industries," including aluminum, vehicles, aircraft, shipbuilding and semiconductors.**
- Operating companies and sponsors doing business with a nexus to these sectors should similarly consider how the Trump administration's international trade priorities may affect their supply chains and how these supply chain decisions impact employment activity.

Canadian and US trade relations are the key to deriving the future benefits of steel production in North America. Benefits that are both equally and highly desirable by communities in which production, fabricating and manufacturing businesses are located. Our economies are integrated and there are mutual gains from this integration.

Communities are made from the people that live in them, the significant loss of economic opportunity is dramatically altering the shape of the communities that rely on steel for good paying jobs and the influence these families have on the community. Loss of people with leadership qualities, intellectual capacity to create innovation in both public and private sectors, and that establish strong middle class values and beliefs system: Engineers, Trades people, Operators, Entrepreneurs, and Innovators. These folks bring capacity to create vibrant and sustainable community, as well as capacity for charitable and not for profit organizations to thrive and fill in the gaps where government services are not offered.

These effects are not unlike the effects of the dramatic drop in oil prices (2015-2016), or the financial crisis (2009-2010) and the impacts felt across the globe. With steel and the steel containing products entering our markets that are manufactured in jurisdictions employing practices of unfair trade, domestic production jobs and economic prosperity are harmed. The root cause of this harm is Steel overcapacity from China and its impact on the countries utilizing this steel in their supply chains. This gives them an unfair advantage over products produced based on economic forces of supply, demand and profit maximization. Non-market economy forces from the government of China, the impact of state owned enterprises in China and state directed enterprises in other Asian countries must be corrected.

Factors of production are similar in Canada and the United States including, wages, other manufacturing input costs, full lifecycle GHG emissions and market prices. The relative market share of each other's market generally reflects the size and capacity of each countries market. However, in some cases foreign countries in the china steel supply chain actually have a greater share of the US market than does Canada.

Canada and the US share many similar trade concerns related to steel and time is of the essence to ensure that the trade relationship between Canada and the United States is not collateral damage from US "Buy America" policies. With the initiation of the investigation pursuant to Section 232 (B) of the Trade Expansion Act the US, Canada has 270 days or less in which to ensure the future of the steel industry and many of its related businesses.

RECOMMENDATION:

The Canadian Chamber of Commerce require the government of Canada to act on behalf of steel and trade exposed industries to:

1. identify steel manufacturing, processing, and trade exposed industries as a "critical element" of the national economy that is trade exposed.
2. communicate the need for an immediate and coordinated response by Canada and the United States to importation of non-market economy produced steel and associated products and by-products.
3. under NAFTA section 232 stress that free and full access to each other's market is the key to avoid reciprocity of a "Buy America" trade stance.
4. stress to all levels of US Government that a disruption to Canadian markets creates uncertainty in the US market.
5. urgently provide royal ascent to the trade remedy effectiveness actions passed as part of Budget 2017 implementation act.
6. provide the CBSA with the human and financial resources to respond fairly, expeditiously, and transparently to unfair trade using the tools available to it meet statutory or regulatory obligations.
7. substantially increase penalties, and determine penalty amounts based on the value of the goods under consideration, administered through the Administrative Monetary Penalty System (AMPS) to commercial clients for violating CBSA's trade and border legislation
8. immediately give Canadian Border Services Agency the ability to invoke Retroactivity of Duties Payable to Date of Finding, in circumstances that have proven to be determined as "Critical" Circumstances.
9. publicly announce the enforcement of Retroactivity of Duties Payable to Date of Finding in Critical Circumstances.
10. rigorously enforce through the Canadian Border Services Agency requirements to document and verify compliance with Annex 401 of NAFTA providing that specific rule of origin is applied to determine whether a good qualifies as an originating good under the terms of the NAFTA.
11. financially support organizations such as the Canadian Chamber of Commerce, Canadian Manufactures and Exporters etc. with programs and ongoing efforts delivered to importers, manufactures, producers and exporters to educate on trade regulations.