

BACKGROUND

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Fixing America's Broken Trade Laws: Section 232 of the Trade Expansion Act of 1962

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Abstract

Section 232 of the Trade Expansion Act of 1962 gives the executive branch virtually unchecked authority to impose or increase tariffs on imports that are thought to threaten U.S. national security. Between 1962 and 2016, Section 232 investigations were conducted more than two dozen times, and presidential action was taken in only six cases. In 2018 alone, President Donald Trump imposed tariffs twice under Section 232, targeting \$48 billion worth of annual imports. During Section 232 investigations, the Administration has even imposed tariffs on close military allies of the United States. At a minimum, this out-of-date statute should be reformed to rebalance this trade authority and ensure that trade policies focus on what is best for all Americans.

Introduction

Section 232 of the Trade Expansion Act of 1962 is an antiquated trade tool that gives the executive branch virtually unchecked authority to impose or increase tariffs on U.S. imports if those imports are thought to threaten U.S. national security. Between 1962 and 2016, Section 232 investigations were conducted more than two dozen times, and presidential action was taken in only six cases. In 2018 alone, President Donald Trump imposed tariffs twice under Section 232, targeting \$48 billion worth of annual imports.¹

The Administration recently concluded an additional investigation regarding automobile and automobile parts imports, as well as an investigation into the effects of uranium imports, and an investigation into the effects of titanium sponge imports is ongoing. During these investigations, the Administration has used broad interpretations of national security and has even imposed tariffs on close mili-

KEY POINTS

- Section 232 of the Trade Expansion Act of 1962 gives the executive branch virtually unchecked authority to impose or increase tariffs on imports that are deemed threatening to U.S. national security.
- The Administration recently concluded Section 232 investigations regarding automobile and automobile parts imports, as well as the effects of uranium imports, and an investigation into the effects of titanium sponge imports is ongoing.
- During these investigations, the Administration has used broad interpretations of national security and has even imposed tariffs on close military allies of the United States.
- At a minimum, reform of this out-of-date statute is imperative to ensure that trade policies focus on what is best for all Americans.
- Each of the proposals introduced in Congress to reform Section 232 varies slightly from the others, but it is clear that there is support in both the House and the Senate for a rebalancing of this trade authority.

This paper, in its entirety, can be found at <http://report.heritage.org/bg3411>

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tary allies of the United States. The result has been a multi-front trade dispute in which American consumers and businesses are the primary casualties.

Although outright repeal of Section 232 would be ideal, at a minimum, reform of this out-of-date statute is imperative to ensure that trade policies focus on what is best for all Americans. Multiple proposals have been introduced in Congress to reform Section 232. Each piece of legislation varies slightly from the others, but it is clear that there is support in both the House and the Senate for a rebalancing of this trade authority.

As Members of Congress work to find a consensus, efforts to reform Section 232 should follow five guiding principles:

- Narrow the scope of Section 232 to address specific defense requirements rather than national security;
- Make the Department of Defense (DOD) the principal agency in determining the initiation of an investigation;
- Make the U.S. International Trade Commission (ITC) the secondary agency and require it to conduct a full economic analysis of domestic impact;
- Establish a process for Congress to approve proposed presidential actions regarding any imposition of trade restrictions under Section 232; and
- Include a retroactivity provision that requires congressional consideration of actions taken under Section 232 since January 2018.

Section 232: History and Reforms

Legislation regarding trade and national security dates back to the Trade Agreements Extension Act of 1954. The primary function of this act was to extend the authority given to the President in Section 350 of the Tariff Act of 1930 to enter into trade agreements. During this time period, the United States was deeply engaged in Cold War–era conflict with the Soviet Union. With national security concerns in mind, Section 2 of the 1954 Act stated that “[n]o action shall be taken pursuant to such Section 350 to decrease the duty on any article if the President finds that such reduction would threaten domestic production needed for projected national defense requirements.”²

The 1954 law specifically addressed “national defense requirements,” but Congress broadened the scope by changing the language to “national security” in 1958.³ It was then that Congress amended the law to establish an investigation process to determine whether an “article is being imported into the United States in such quantities or under such circumstances as to threaten to impair national security.”⁴ Congress also named the Director of the Office of Defense and Civilian Mobilization, a predecessor of the Federal Emergency Management Agency, as the lead for investigations under the law. This amendment provided significantly more direction than had been provided by the original directive, but it also expanded the President’s authority.

Congress carried this process over to Section 232 of the Trade Expansion Act of 1962, the law currently being used by President Trump to impose tariffs.⁵ When President John F. Kennedy signed the Trade Expansion Act into law, national security was a primary concern. Since 1962, this section has been amended three times.

1. President Donald J. Trump, “Presidential Proclamation on Adjusting Imports of Steel into the United States,” The White House, March 8, 2018, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/> (accessed May 11, 2019), and President Donald J. Trump, “Presidential Proclamation on Adjusting Imports of Aluminum into the United States,” The White House, March 8, 2018, <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-aluminum-united-states/> (accessed May 11, 2019).

2. Trade Agreements Extension Act of 1954, Public Law 83-464, 83rd Cong., July 1, 1954, 68 Stat. 360, Section 2, <https://www.govinfo.gov/content/pkg/STATUTE-68/pdf/STATUTE-68-Pg360-2.pdf> (accessed May 11, 2019).

3. Trade Agreements Extension Act of 1958, Public Law 85-686, 85th Cong. August 20, 1958, 72 Stat. 673, Section 8, <https://www.govinfo.gov/content/pkg/STATUTE-72/pdf/STATUTE-72-Pg673.pdf> (accessed May 11, 2019).

4. Ibid.

5. Trade Expansion Act of 1962, Public Law 87-794, 87th Cong., October 11, 1962, 76 Stat. 872, Section 232, <https://www.govinfo.gov/content/pkg/STATUTE-76/pdf/STATUTE-76-Pg872.pdf> (accessed May 11, 2019). Shortly after signing the Trade Expansion Act, President Kennedy was dealing with the Cuban Missile Crisis.

Just over a decade later, the Trade Act of 1974 made the Department of the Treasury the lead agency for investigations and required the Treasury Secretary to “consult with[] the Secretary of Defense, the Secretary of Commerce, and other appropriate officers of the United States” during those investigations.⁶ Previously, the law had stated only that the lead investigator “shall seek information and advice from other appropriate departments and agencies, to determine the effects on the national security of imports....”⁷ The 1974 Act also directed the Secretary of the Treasury to hold public hearings, if appropriate, during Section 232 investigations and required that these investigations be completed within one year.⁸

In 1980, the Carter Administration was investigating petroleum imports under Section 232, and it later used the law to impose a license fee on petroleum imports. At the same time, Congress passed the Crude Oil Windfall Profit Tax Act of 1980, which provided that the legislative branch could halt presidential action to restrict imports of petroleum or petroleum products by passing a joint “disapproval resolution.”⁹ The House of Representatives successfully passed such a resolution two weeks after President Carter’s action, but the resolution was not approved by the Senate. A U.S. District Court eventually ruled against President Carter’s use of Section 232 in this case.¹⁰ The Senate’s failure to approve the joint resolution exhibits the flaws of a disapproval process under Section 232.

The final amendment to Section 232 occurred in 1988 when Congress passed the Omnibus Trade and Competitiveness Act, which made the Secretary of Commerce the lead investigator in Section 232 cases. The 1988 law also shortened the investigation timeline from one year to 270 days and imposed a 15-day

implementation period if, after an investigation, the President chose to restrict trade.¹¹

Current Section 232 Authority

The authority and scope of Section 232 today are vastly different from the original 1954 directive from Congress. Its authority is no longer limited to preventing the President from decreasing tariffs on products determined to be necessary for national defense. The reforms passed by Congress over the years—all of them during the Cold War era—have expanded the scope of the law, established an investigation process, and reorganized the applicable bureaucratic procedures within the executive branch.

Under the current law, a Section 232 investigation can be self-initiated by the Secretary of Commerce, initiated “upon application of an interested party,” or initiated “[u]pon request of the head of any department or agency.”¹² Three of the five investigations conducted since President Trump took office have been initiated pursuant to a direct order by Commerce Secretary Wilbur Ross. During the investigation process, which must be completed within 270 days, Section 232 instructs Commerce to:

[G]ive consideration to domestic production needed for projected national defense requirements, the capacity of domestic industries to meet such requirements, existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense, the requirements of growth of such industries and such supplies and services including investment, exploration, and development necessary to assure growth, and the importation of goods in terms of their quantities, avail-

6. Trade Act of 1974, Public Law 93-618, 93rd Cong., January 3, 1975, 88 Stat. 1978, Section 127, <https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg1978-2.pdf> (accessed May 11, 2019).

7. Trade Expansion Act of 1962, Section 232.

8. Trade Act of 1974, Section 127.

9. Crude Oil Windfall Profit Tax Act of 1980, Public Law 96-223, 96th Cong., April 2, 1980, 94 Stat. 229, Section 402, <https://www.govinfo.gov/content/pkg/STATUTE-94/pdf/STATUTE-94-Pg229.pdf> (accessed May 11, 2019).

10. Rachel F. Fefer, Keigh E. Hammond, Vivian C. Jones, Brandon J. Murrill, Michaela D. Platzer, and Brock R. Williams, “Section 232 Investigations: Overview and Issues for Congress,” Congressional Research Service Report for Members and Committees of Congress, updated April 2, 2019, p. 37, <https://fas.org/sgp/crs/misc/R45249.pdf> (accessed May 10, 2019).

11. Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, 100th Cong., August 23, 1988, 102 Stat. 1107, Section 1501, <https://www.govinfo.gov/content/pkg/STATUTE-102/pdf/STATUTE-102-Pg1107.pdf> (accessed May 11, 2019).

12. Trade Expansion Act of 1962, Section 232(b).

abilities, character, and use as those affect such industries and the capacity of the United States to meet national security requirements.¹³

Following this investigation, the Secretary of Commerce must submit a report to the President determining whether imports of the product under investigation “threaten to impair the national security.”¹⁴ After receiving the Commerce report, the President has 90 days to decide whether or not to impose trade restrictions.

Interpreting “National Security”

Section 232 is a mechanism for limiting imports in order to safeguard U.S. national security, but because the term “national security” is left undefined in the law, the executive branch is able to apply very broad interpretations. It is important to have flexibility with regard to U.S. security threats; however, too much flexibility can lead to executive branch abuse.

Prior to 2018, Section 232 investigations did not use overly broad interpretations of the national security. Even during a 2001 investigation of steel imports, the Commerce Department found that:

[I]n addition to the satisfaction of national defense requirements, the term “national security” can be interpreted more broadly to include the general security and welfare of certain industries, beyond those necessary to satisfy national defense requirements that are critical to the minimum operations of the economy and government (“critical industries”).¹⁵

Nevertheless, Commerce concluded that the steel products being imported did not threaten to impair national security because they were imported “from diverse and ‘safe’ foreign suppliers, with the largest suppliers of these products being U.S. allies in the Western Hemisphere....”¹⁶

A 2018 report released by the Commerce Department took the interpretation of national security beyond the interpretations of previous Administrations. Commerce took the definition from 2001 and paired it with a troubling interpretation of congressional directives to consider whether “the impact of foreign competition” and “the displacement of any domestic products by excessive imports, or other factors, result in a ‘weakening of our internal economy.’”¹⁷

Commerce also used an expanded interpretation of “critical industries” based on a 2013 directive by President Barack Obama that included 16 sectors ranging from “critical manufacturing” to “food and agriculture” and “transportation systems.”¹⁸ The 2018 report went so far as to say that “it appears likely that Congress recognized adverse impacts might be caused by imports from allies or other reliable sources.”¹⁹ The Commerce Department further argued that:

Should the U.S. once again experience a conflict on the scale of the Vietnam War, steel production capacity may be slightly insufficient to meet national security needs. But if the U.S. were to experience a conflict requiring the production increase seen during the Second World War, the existing domestic steel production capac-

13. Trade Expansion of 1962, Section 232(c).

14. Ibid.

15. U.S. Department of Commerce, Bureau of Export Administration, *The Effect of Imports of Iron Ore and Semi-Finished Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, October 2001, p. 5, <https://www.bis.doc.gov/index.php/documents/section-232-investigations/81-iron-ore-and-semi-finished-steel-2001/file> (accessed May 10, 2019).

16. Ibid., p. 2.

17. U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, January 11, 2018, p. 11, <https://agoa.info/images/documents/15373/theeffectofimportsofsteelonthenationalsecurity-withredactions-20180111.pdf> (accessed May 10, 2019).

18. The full list of “critical infrastructure sectors” in this directive includes chemical, commercial facilities, communications, critical manufacturing, dams, defense industrial base, emergency services, energy, financial services, food and agriculture, government facilities, health care and public health, information technology, nuclear reactors, materials and waste, transportation systems, and water and wastewater systems. Presidential Policy Directive/PPD-21, “Critical Infrastructure Security and Resilience,” The White House, February 12, 2013, <https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil> (accessed May 10, 2019).

19. U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security*, p. 17.

ity would be unable to meet national security requirements.²⁰

The 2018 report presumes a scenario in which America's allies of longest standing, such as Canada, would not support the U.S. in a third world war and would cease all means of trade.

Narrowing Section 232's Scope to National Defense Needs

To modernize Section 232 so that it meets U.S. defense needs, Congress should prioritize the scope of investigations. As noted, the executive branch has demonstrated its ability to interpret national security in an unprecedented manner. This was possible because Section 232 lacks language specifying exactly what constitute national security concerns.

The term "national security" has generally remained ambiguous to allow the U.S. government flexibility to address a number of emerging threats in more than just the context of Section 232. For example, the Committee on Foreign Investment in the United States (CFIUS) is able to address a variety of threats from foreign investments "covered" by related laws. In 2017, President Donald Trump was able to use this legal authority to block the sale of Lattice Semiconductor to Canyon Bridge Capital Partners, a Chinese investment company.²¹ In 2018, President Trump again used the CFIUS process to block the acquisition of Qualcomm by Broadcom.²² In the first case, the Administration may have been concerned about a Chinese company's ability to gain strategically significant ownership in the U.S. semiconductor industry; in the second, the Administration was concerned about potential impairment of Qualcomm's investment in research and development for next-generation telecommunications technology.

The vagueness of such a broad term as "national security," however, also leaves room for misuse. As demonstrated in recent CFIUS reform debates, a number of policymakers would like to include topics like food security, job security, and economic security. Congress was able to pass CFIUS reform

in late 2018 without the addition of these overtly vague concepts.

While the definition of national security should remain flexible as a practical matter, Section 232 needs balanced reform to keep it from being used to implement protectionist policies. For example, the DOD has highlighted that only 3 percent of steel production in the U.S. is required for defense needs. Therefore, rather than ensuring that defense needs are being met, the tariffs on steel and aluminum are simply having the effect of artificially increasing the price of those goods, whether they are sourced domestically or from abroad. This may temporarily assist domestic steel producers, but it harms the millions of Americans who are employed in steel-consuming industries. There also are questions about whether the Administration is using Section 232 investigations as leverage in trade negotiations.

To prevent any further abuse of Section 232 authority, language should focus more precisely on the national defense needs of the U.S. instead of more broadly on national security. The imposition of trade restrictions on imports under this law should be based solely on the ability of DOD programs to acquire the resources they need to meet national defense requirements.

Making the DOD a Lead Agency

Section 232 specifies that any investigation related to national security should be conducted in consultation with the Department of Defense. However, the DOD does not possess much power to affect the outcome of the Commerce Department's investigation. In fact, there is no requirement that any DOD assessment appear in unmodified form in the final Commerce report to the President. Following media reports from December 2017 citing disagreement between Commerce and Defense officials, a February 2018 memorandum from the Secretary of Defense stated that "DoD does not believe that the findings in the [Commerce] reports impact the ability of DoD programs to acquire the steel or aluminum necessary to meet national defense requirements."²³ In other

20. *Ibid.*, pp. 50–51.

21. James K. Jackson, "The Committee on Foreign Investment in the United States (CFIUS)," *Congressional Research Service Report for Members and Committees of Congress*, July 3, 2018, p. 66, <https://fas.org/sgp/crs/natsec/RL33388.pdf> (accessed May 10, 2019).

22. *Ibid.*

23. Quoted in editorial, "The National Security Tariff Ruse," *The Wall Street Journal*, March 12, 2018, <https://www.wsj.com/articles/the-national-security-tariff-ruse-1520897310> (accessed May 15, 2019).

words, the Commerce report may not have supplied the President with all of the facts, including the extent of the Defense Department's need for access to steel.

The DOD is best equipped to identify its need for a particular product and should have a more active role during the investigative process. With that in mind, Section 232 investigations should start in the Department of Defense, which should be tasked with:

- Identifying the quantity of the product needed to meet essential national defense requirements; and
- Determining whether DOD programs have the ability to acquire the amount of the product in question or a suitable substitute to meet those requirements.

If the department determines that it is able to acquire the needed product, the investigation should stop there. If the department determines that it is unable to acquire the necessary product or a suitable substitute, it should then submit a report to the International Trade Commission and the congressional committees of jurisdiction explaining the lack of availability. This DOD report should also be included in its entirety as an addendum to the final report presented to the President.

Making the ITC the Secondary Agency

The Department of Commerce currently conducts the majority of the Section 232 investigations. However, the work required by an investigation of this kind would be conducted more appropriately by the U.S. International Trade Commission.

The current reliance on the Commerce Department for the Section 232 process is questionable given that the department is not responsible for directing the majority of trade enforcement investigations gen-

erally. The department is only partially involved in antidumping and countervailing duty investigations, as well as in the enforcement of export controls.

In addition, the department is directed primarily by political appointees, which makes its work susceptible to political interference and rent-seeking. For example, Commerce used an economic model during its steel and aluminum investigations to determine the level of trade restrictions needed to increase domestic production of these commodities.²⁴ The same model was also used by a private organization, Trade Partnership, to estimate potential job losses from the tariffs on steel and aluminum. Trade Partnership's report found that the tariffs would lead to slightly more than 26,000 steel and aluminum industry jobs while putting more than 430,000 other American jobs at risk.²⁵ Commerce did not conduct a similar analysis even though it had the capability to do so.

The ITC, on the other hand, is responsible for determining injury to the domestic industry during antidumping and countervailing duty cases, as well as for conducting cases under Sections 201 and 421 of the Trade Act of 1974.²⁶ The ITC also conducts full-scale economic analysis whenever the U.S. and another country sign a new trade agreement, as required under Trade Promotion Authority.²⁷ Trade modeling is not perfect, but it does provide additional pieces of the puzzle when changes in trade restrictions are being considered.

The commission is also less politically influenced than Commerce, as no more than three of its five commissioners can be from the same political party. The ITC operates with the following restrictions to prevent political bias:

Commissioners serve overlapping terms of nine years each, with a new term beginning every 18 months. The Chairman and Vice Chairman are

24. U.S. Department of Commerce, Bureau of Industry and Security, Office of Technology Evaluation, *The Effect of Imports of Steel on the National Security*.

25. Joseph Francois, Laura M. Baughman, and Daniel Anthony, "Policy Brief Round 3: 'Trade Discussion' or 'Trade War'? The Estimated Impacts of Tariffs on Steel and Aluminum," Trade Partnership Worldwide, LLC / The Trade Partnership, June 5, 2018, p. 2, <http://tradepartnership.com/wp-content/uploads/2018/06/232RetaliationPolicyBriefJune5.pdf> (accessed May 11, 2019).

26. Section 201 of the Trade Act of 1974 allows the President to restrict imports in the case that a U.S. industry is proven to be injured by imports. Section 201 is often referred to as the "safeguard" law. Section 421 of the Trade Act of 1974 is similar to Section 201, but it only applies to imports from China and allows for import restriction in the case that imports are causing a market disruption. U.S. International Trade Commission, "About Import Injury Investigations," https://www.usitc.gov/trade_remedy.htm (accessed May 11, 2019).

27. Ian F. Fergusson and Christopher M. Davis, "Trade Promotion Authority (TPA): Frequently Asked Questions," Congressional Research Service *Report for Members and Committees of Congress*, updated February 13, 2019, <https://fas.org/sgp/crs/misc/R43491.pdf> (accessed May 10, 2019).

designated by the President from among the current Commissioners for two-year terms. The Chairman and Vice Chairman must be from different political parties, and the Chairman cannot be from the same political party as the preceding Chairman.²⁸

The economists and industry experts at the ITC, who have in-depth experience with modeling and economic analysis, are best equipped to evaluate the potential effects of modifying trade restrictions and make recommendations to the President. The ITC should be responsible for taking over a Section 232 investigation if the DOD determines that it is unable to acquire the necessary product or a suitable substitute.

Requiring Analysis of Downstream Impacts

Section 232 does not currently require an analysis of the potential costs of trade restrictions to downstream industries, costs to consumers, or even the impact that any proposed remedies could have on the American economy. Information of this kind should be available to the President when the use of tariffs is being considered, because trade restrictions often create winners and losers in the economy.

For example, the primary opposition to the current Section 232 tariffs on steel and aluminum imports comes from manufacturing industries that use these products as intermediate goods. The steel and aluminum sectors employ slightly more than 200,000

Americans, and users of these goods employ more than 13.7 million Americans.²⁹ The 25 percent tariff on steel increased domestic steel prices by nearly 40 percent between January 2018 and July 2018.³⁰ The 10 percent tariff on aluminum increased commodity prices to a three-year high in 2018.³¹ Yet current tariff policies are focused on increasing the price of steel and aluminum to the benefit of one group of producers, while users and eventually American consumers pay the inflated cost. Overall, the costs significantly outweigh the benefits, and if the national security benefits are dubious or nonexistent, there is no legitimate justification for the tariff.

Previous Administrations have justly considered downstream impacts during Section 232 investigations. In 1999, one of the key factors in President Bill Clinton's decision not to impose tariffs on crude oil imports under Section 232 was the impact that tariffs would have had on the U.S. economy. Commerce found in this case that "the costs to the national security of an oil import adjustment outweigh the potential benefits" and that "a tariff could result in the loss of a significant number of jobs in many non-petroleum sectors."³² Trade restrictions, by their nature, result in price increases for the goods in question, and it was this fact that helped deter President Clinton from imposing tariffs under Section 232.

Economic impact analysis is also common practice during other cases involving modification of tariff and nontariff barriers. As noted, by law, the ITC must examine the effects of new trade agreements. New trade agreements typically involve eliminating trade

28. U.S. International Trade Commission, "Commissioner Bios," https://www.usitc.gov/press_room/bios.htm (accessed May 10, 2019).

29. Categories 3311 (iron and steel mills and ferroalloy production); 3312 (steel products from purchased steel); and 3313 (alumina and aluminum production) in Table B-1a, "Employees on Nonfarm Payrolls by Industry Sector and Selected Industry Detail, Seasonally Adjusted," in U.S. Department of Labor, Bureau of Labor Statistics, Quarterly Census of Employment and Wages, Current Employment Statistics-CES (National), last modified May 3, 2019, <https://www.bls.gov/web/empsit/cese1a.htm> (accessed May 15, 2019). Steel and aluminum-consuming manufacturers employ 6.6 million Americans and produce fabricated metal products; machinery; computer and electronic products; electrical equipment, appliances, and components; motor vehicles, trailers, and parts; other transportation equipment; furniture and related products; and miscellaneous manufacturing. The construction industry employs 7.1 million Americans. Table 6.4D, "Full-Time and Part-Time Employees by Industry," U.S. Department of Commerce, Bureau of Economic Analysis, last revised July 31, 2018, <https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2&isuri=1&1921=survey> (accessed May 11, 2019).

30. Authors' calculation based on data in SteelBenchmarkerTM, "Price History: Tables and Charts," *SteelBenchmarkerTM Report #314*, <http://steelbenchmarker.com/files/history.pdf> (accessed May 15, 2019).

31. InfoMine, "5 Year Aluminum Prices and Price Charts," *InvestmentMine*, <http://www.infomine.com/investment/metal-prices/aluminum/5-year/> (accessed May 10, 2019).

32. U.S. Department of Commerce, Bureau of Export Administration, *The Effect on the National Security of Imports of Crude Oil and Refined Petroleum Products: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, as Amended*, November 1999, p. ES-9, <https://www.bis.doc.gov/index.php/forms-documents/section-232-investigations/87-the-effect-of-imports-of-crude-oil-on-national-security-1999/file> (accessed May 10, 2019).

barriers, thereby reducing tariffs and import taxes on Americans. If analysis is required when actions would lower trade barriers for Americans, the same should be required for actions that would increase barriers.

Therefore, during Section 232 investigations, the International Trade Commission should be required to conduct an economic analysis of the potential impacts of proposed trade restrictions. Such analysis should include details on the possible impact of these restrictions on the price of the product in question, as well as the potential effects of that price on downstream industries and consumers, and the overall impact of the proposed restrictions on the economy as a whole. These results should be shared with the committees of jurisdiction and included in their entirety both in the report transmitted to the President and in a report released to the public.

Restoring Congressional Oversight

Article 1, Section 8 of the United States Constitution states that “[t]he Congress shall have power... to regulate Commerce with foreign nations.” For decades, however, Congress has delegated portions of its authority on trade to the executive branch. Section 232 is one example. Members of Congress have spent months writing letters to the Administration expressing their disapproval of tariffs on steel and aluminum, as well as their opposition to potential tariffs on imports of automobiles and automobile parts.³³ These actions are the limit of their current ability to be involved in the Section 232 investigation process.

Congress should become more involved throughout the Section 232 investigative process, especially members of the Senate Finance and House Ways and Means Committees that have legislative jurisdiction. Consultation with these members should be conducted with the utmost transparency, and Congress should receive the complete reports of these investigations from the DOD and ITC.

Additionally, Congress should have the power of final approval of any proposed presidential measures to restrict trade under Section 232. To ensure that such approval is based on the merits of the investigation and not influenced by political pressures, a time-

ly approval resolution process should be created. As demonstrated in the case of President Carter in 1980, disapproval resolutions are not effective in preventing unwanted trade restrictions.

The voice of Congress was not heard during the many Section 232 investigations conducted by the Trump Administration. It is important that Members be able either to express their consent retroactively for tariffs currently in effect under this law or vote to have them removed entirely. Reforming Section 232 without retroactivity would miss the mark and condone the disregard for Congress’s important constitutional oversight role with respect to trade.

What Congress Should Do

Congress has a constitutional role to play in determining how commerce is regulated even in the context of national security. It is important that old laws be reformed to ensure that they are not being used beyond their intent. Therefore, Congress should:

- **Reform Section 232 to shift its focus from national security to national defense needs.** This would help to prevent the misuse of Section 232 authority to include overtly vague issues like food security, job security, and economic security.
- **Make the Department of Defense the lead agency in determining whether there is a threat to national defense.** The Commerce Department is not equipped to know what the DOD needs to meet national defense requirements. If the DOD determines that it has sufficient access to the materials needed to maintain its programs, trade restrictions should not be implemented.
- **Make the International Trade Commission the secondary agency in investigations.** The economists and industry experts at the ITC, because of their in-depth experience with modeling and economic analysis, are best equipped to make recommendations to the President and evaluate the potential effects of modified trade restrictions.

33. Letter from Representative Kevin Brady, Chairman, House Committee on Ways and Means; Representative David G. Reichert, Chairman, Subcommittee on Trade, House Committee on Ways and Means; and 105 other Members of the U.S. House of Representatives to President Donald J. Trump, March 7, 2018, https://republicans-waysandmeansforms.house.gov/uploadedfiles/03.07.18_letter_to_potus.pdf (accessed May 11, 2019).

- **Redirect funding for Section 232 investigations to the Department of Defense and the International Trade Commission.** Currently, funding for Section 232 investigations is appropriated primarily to the Department of Commerce. Those funds should be redirected to the DOD and ITC.
- **Require the International Trade Commission to provide a cost-benefit analysis.** The ITC's role is to support DOD findings. Any recommendations made to the President by the ITC to support the DOD's needs should be accompanied by a cost-benefit analysis that is made public.
- **Establish a congressional approval process for Section 232 duties.** Congress has an important role to play in regulating commerce. An approval process before trade restrictions are imposed will give Congress some of the oversight it needs on this important issue.
- **Make Section 232 reform retroactive.** Congress should have the opportunity to approve or undo the tariffs imposed thus far under Section 232. Reform without retroactivity would be a missed opportunity.

Conclusion

It is imperative that trade authority between Congress and the executive branch be rebalanced. Section 232 of the Trade Expansion Act of 1962 has been employed too broadly by the Trump Administration. The current use of this law has highlighted its severe weaknesses in the areas of both process and oversight. Interest in amending Section 232 has been expressed in a bipartisan and bicameral manner, and Congress should follow the foregoing recommendations to ensure that trade policies focus not just on what is best for certain sectors of the economy, but on what is best for *all* Americans.

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