



Comments on Section 232 National Security Investigation of Imports of Aluminum
From Steve Charnovitz, George Washington University Law School
May 11, 2017
DOC Billing Code 3510-33-P

Aluminum is vital to US national security and therefore it is good news that world markets and US product of aluminum are both so economically sustainable. Let me respond to each of the \$705.4 points:

With respect to (a) and (b), the US industry is strong consisting of about 400 companies that produce aluminum. Of those 400 companies, there are about 50 that have over 80% of the US market. With 50 companies, there is considerable competition and possibilities for expanding US production. About 20% of US production is exported, so if there ever were a shortage of aluminum, then controlling exports would be an initial strategy. Of course, the better long term solution to a US shortage would be to expand US imports of aluminum and to expand US production.

Currently, aluminum imports make up about 30% of US consumption and our trading partner Canada is the largest supplier to the US market. Improving trade relations with Canada ought therefore to be part of the strategy for preserving access to aluminum. Unfortunately, the Trump Administration has been reported to be threatening Canada with illegal trade actions regarding dairy and softwood lumber. Obviously, this is exactly the wrong approach toward maintaining Canada as a reliable supplier of needed steel. Instead, the NAFTA should be strengthened, not weakened.

With regard to (c), I have heard that the US economy does not have sufficient trained human resources in many sectors for manufacturing and other production. That is because US training programs are so poor and I would urge the Commerce Department to take a more active role in improving workplace training, especially on-the-job training by employers.

With regard to (e), foreign competition is a fact of life in the 21st century and the Trump Administration should stop asserting that the US industry cannot compete with their counterparts in China or Mexico. In a modern global economy, the United States should not expect to produce 100% of its aluminum any more than we should expect to produce 100% of our iPhones or of our wine. Just as the US economy needs the importation of foreign capital and foreign workers, so too do we need the importation of foreign goods and services. This is vital to a healthy commerce for the United States.

With regard to (f), if there is significant displacement of US jobs by foreign imports, then the proper approach is to vitalize the US trade adjustment assistance programs, particularly the

programs for firms which are under the jurisdiction of the Commerce Department. I would also like to see a revival of the program of trade adjustment assistance for communities which was carried out effectively the Commerce Department in the 1970s, and then was abolished during the Reagan Administration.

With regard to (g) and (h), I read a disturbing article by Jenny Leonard in *Inside US Trade* yesterday titled "Ross, citing lack of bipartisanship in Congress, defends use of 232 investigations" (May 10). According to this article, Commerce Secretary Ross has been arguing that a Section 232 investigation for steel and aluminum is needed because Congress is not working with the Administration to combat "trade violations." He also hinted that the Administration was exploring the Section 232 tool to deal with the problem of other countries being "protectionist." This news about Secretary's Ross's statements is disturbing because US law has remedies for foreign trade violations and for foreign protectionism. For example, if there were a foreign subsidy that caused injury to US producers, US law provides a remedy of a countervailing duty to be imposed by the Commerce Department. For other violations of international trade law, there is the remedy of lodging a case at the WTO. For foreign protectionism, the remedy provided in US law is to initiate trade negotiations. The Trump Administration does not need Congressional bipartisanship or Congressional approval to pursue any of the solutions needed above.

The problem with using the Section 232 tool as a substitute for antidumping, countervailing duties, safeguards, WTO dispute settlement, or trade negotiations is that the Section 232 instrument is available only for market situations that threaten to impair US national security. If the US were to impose an import ban under Section 232 that was ostensibly for national security reasons, but instead had an ulterior motive of assisting US domestic producers in their foreign competition, that action by the President could be vulnerable to being struck down by US courts and by a WTO panel.

Let me also take this opportunity to respond to the public comments by TradeLawBro (whoever that is) to my submission of April 26 to the Commerce Department regarding the Section 232 steel investigation. My submission suggested that a US Section 232 action on steel would violate WTO law and therefore undermine the world trading system. TradeLawBro complained that "With respect to the policy implications, it is not clear why such [232] action would hurt the world trading system. Every major WTO Member that is a steel producer has raised concerns about China's massive subsidization of its steel industry -- and how it threatens global stability in the market. China's economic policies are in many respects sui generis. It is not clear why effective action against these distortive policies would cause the credibility of the global trading system to falter; it might actually incentivize WTO Member to actually ensure their industries reflect genuine market conditions." The answer to TradeLawBro is that for steel which is made in at least 67 countries, whether China subsidizes or does not subsidize its steel production has no practical implications for US national security. Indeed, if anything, the subsidy enhances US national security because we can buy steel for less and therefore have more money left over to use to build things using steel such as bridges, aircraft carriers, and schools.