

CLIENT ALERT

Commerce Initiates Investigation into Steel Imports' Impact on U.S. National Security

April 20, 2017

Commerce Secretary Wilbur Ross has initiated an investigation under section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) to determine whether steel is being imported into the U.S. in such quantities or under such circumstances as to threaten to impair national security. The Department of Commerce (DOC) now has 270 days to conduct an investigation and prepare a report on its findings for submission to the president.

In the event action against steel imports is found to be necessary on the basis of DOC's report, the president has authority to take action to "adjust imports" of steel. The potential remedies available to the president in this context include changing the rate and form of import duties on steel without apparent limitation, as well as limiting or restricting steel imports, including through the negotiation of an agreement to that effect.

If, as a result of its investigation DOC finds that action is required, the president then has 90 days to determine (i) whether he agrees and, if so, (ii) the nature and duration of the action necessary to adjust steel imports. Such action must then be taken no later than 15 days after the president's determination. Within 30 days of making his determination, the president must inform Congress in writing of the reasons for his determination.

In the course of its investigation, DOC must consider not only the quantities of steel being imported and other circumstances related to steel trade as they affect the state of the domestic steel industry, but also national security requirements related to steel, including the following:

1. Domestic production needed for projected national defense requirements.
2. The capacity of domestic industries to meet projected national defense requirements.
3. The existing and anticipated availabilities of human resources, products, raw materials, production equipment and facilities, and other supplies and services essential to the national defense.
4. The 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.
5. Any other relevant factors.

In addition, DOC must also consider the following elements regarding the quantity, availability, character, and uses of imported steel:

1. The impact of foreign competition on the economic welfare of any domestic industry essential to U.S. national security.
2. The 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.
3. Any other relevant factors that are causing or will cause a weakening of the U.S. economy.

The Secretary of Commerce must consult with the Secretary of Defense during DOC's investigation and may request of his counterpart an assessment of the defense requirements for steel. The communications DOC receives from other U.S. Government agencies such as the Department of Defense are not available for public inspection. In the course of its investigation, DOC may also solicit additional information from other sources through the use of questionnaires or other means.

Interested parties will only be afforded an opportunity to present information and advice relevant and material to the investigation (*e.g.*, written comments, opinions, data, information or advice) if DOC determines that it is appropriate. Such an opportunity would be announced in due course in the Federal Register. Similarly, a public hearing allowing interested parties the opportunity to submit oral or written information may only be held if DOC deems it appropriate and would also be announce in the Federal Register.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Daniel Cannistra

Partner – Washington, D.C.
Phone: +1.202.624.2902
Email: dcannistra@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.
Phone: +1.202.624.2561
Email: agourley@crowell.com

Alexander H. Schaefer

Partner – Washington, D.C.
Phone: +1.202.624.2773
Email: aschaefer@crowell.com

Jeffrey L. Snyder

Partner – Washington, D.C.
Phone: +1.202.624.2790
Email: jsnyder@crowell.com

John B. Brew

Partner – Washington, D.C.
Phone: +1.202.624.2720
Email: jbrew@crowell.com

Robert L. LaFrankie

Partner – Washington, D.C.
Phone: +1.202.624.2868
Email: rlafrankie@crowell.com