

Intelligence MEMOS



From: Jon Johnson
To: Canadians Concerned About US Trade Threats
Date: November 26, 2019
Re: **SECTION 232 AUTO THREAT EXPIRES**

Last week was significant for Canadians concerned about the possibility of US tariffs on imports of automotive goods under Section 232 of the *Trade Expansion Act of 1962*. Donald Trump chose not to take action before a time limit to do so expired.

The threat of hefty tariffs being imposed on imports of automotive goods into the US has been a possibility since Commerce Secretary Wilbur Ross found that imports of autos and auto parts threatened US national security. President Trump had 90 days to adjust imports to eliminate the threat, but instead, as permitted by Section 232, he directed the US Trade Representative to negotiate agreements limiting imports with Japan, the EU and any other country deemed appropriate. That gave Trump another 180 days, presuming no agreement, to take such other actions necessary to adjust imports so that such imports will not threaten national security.

The president's proclamation was dated May 17, so the 180 days ran out on November 13. The US did get one agreement with Japan, but it does not cover autos or auto parts. No agreement has been reached with the EU or any other country.

Section 232 prescribes that a notice stating the president chooses not to take any action shall be published in the Federal Register. No such notice has been published.

So, where does this leave us?

Jennifer Hillman, a former USTR general counsel, argues that by "missing" the 180-day deadline, the president has lost power to impose Section 232 tariffs on autos and auto parts. She cites the recent decision of the US Court of International Trade in *Transpacific Steel LLC v. US* as standing for the proposition that the deadlines in Section 232 matter.

That case involves the 50 percent tariff on Turkish steel imposed in August 2018 by presidential proclamation, purportedly under the authority of Section 232. That January, Secretary Ross had delivered a report to the president finding that steel imports threatened US national security. In March, well within the 90-day limit, President Trump imposed a 25 percent tariff on steel from all countries. Then in August, he proclaimed the extra tariffs on Turkish steel. That fell outside the 90-day limit, ruled the trade court, and had not been preceded by the steps required under Section 232.

In short, the Section 232 time limits mattered. Similarly, so the argument goes, the 180-day time limit imposed on President Trump to impose Section 232 tariffs on autos and auto parts in the absence of an agreement also matters, and President Trump's power to impose such tariffs no longer applies.

One of the November 30, 2018, CUSMA side letters between Canada and the US provides that Section 232 tariffs, if imposed, will not apply to prescribed quantities of imports into the US from Canada of passenger vehicles, light trucks and auto parts. The potential limitations on Canadian access to the US automotive market that would have been imposed by those quantities do not apply if Section 232 tariffs are not imposed.

One hopes President Trump and his advisors have backed off the idea of imposing Section 232 tariffs on autos and auto parts, giving our trade negotiators one less threat to worry about.

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