

Intelligence MEMOS



From: Jon Johnson

To: Canadians Concerned About Section 232 Tariffs

Date: June 24, 2020

Re: **RELIEF FROM THREAT OF SECTION 232 TARIFFS – END OF THE ROAD**

Section 232 of the US *Trade Expansion Act of 1962*, which grants to the president broad powers to “adjust” imports that the Commerce Department finds threaten national security, has become a favoured trade weapon of the Trump administration.

There have been eight investigations under the Trump administration since 2017. Compare this with 26 investigations from 1962 to that point and none since 2001. The Trump administration’s first Section 232 target was steel and aluminum. Though Canada successfully negotiated an exemption, imports of steel and aluminum into the US from most countries remain subject to Section 232 tariffs.

The definition of national security in Section 232 is virtually unlimited and an affirmative finding by the Commerce Department or adjustment actions taken by the president cannot be challenged through judicial review.

There have been two initiatives to limit or block the power of the president utilizing Section 232, one congressional and the other judicial.

Many members of Congress have been troubled by Section 232 and Congress has attempted through the introduction of bills to limit the president’s Section 232 powers. None of these initiatives progressed in any meaningful way. On May 28, Senate Finance Committee Chairman Chuck Grassley announced that efforts to reform Section 232 have stalled because of lack of consensus and fear among some Republicans of going against Trump.

The American Institute for International Steel, Inc. (AIIS) challenged Section 232 as an unconstitutional delegation of legislative authority. The Court of Appeals dismissed the AIIS challenge and AIIS petitioned the US Supreme Court seeking judicial review of the decision, but the court denied the petition on Monday, June 22 without reasons, which is the end of the road for the AIIS challenge.

Section 232 continues to threaten Canadian exporters. Canada’s exemption from the Section 232 steel and aluminum tariffs is tenuous. If imports of steel or aluminum products “surge meaningfully beyond historic volumes of trade,” the US may (after consultations) impose duties of 25 percent for steel and 10 percent for aluminum on the individual products where the surge occurred. US Trade Representative Robert Lighthizer said during a Senate Finance Committee hearing last week that there have been surges in steel and aluminum from Canada. The American Primary Aluminum Association has been lobbying hard for the re-imposition of tariffs.

The Canada-United States-Mexico Agreement (CUSMA) will eliminate a potential avenue for challenging Section 232 tariffs. The NAFTA national security exception, like its GATT/WTO counterpart, only applies to actions relating to traffic in arms, taken in time of war or other emergency in international relations, and relating to policies respecting nuclear proliferation.

CUSMA Article 32.2 (Essential Security) provides that nothing in CUSMA precludes a party from applying measures that it considers necessary for the protection of its essential security interests without limitation. The GATT/WTO provision still exists but is ineffective because the US has hamstrung the WTO dispute settlement process.

Section 232 has significant downsides for a US administration. Section 232 tariffs are taxes on US producers and consumers that hurt the US economy. Section 232 tariffs invite retaliation by US trading partners causing further damage.

As has occurred with steel and aluminum, Section 232 necessitates the bureaucratic complication of administering thousands of exclusion requests. These negatives may, in time, outweigh whatever benefits future US administrations may see in pursuing Section 232 investigations.

Jon Johnson is a former advisor to the Canadian government during NAFTA negotiations and is a Senior Fellow at the C.D. Howe Institute.

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