

Intelligence MEMOS



From: Jon Johnson
To: Canadians Concerned about the Canadian Auto Industry
Date: July 18, 2018
Re: **WHAT WE CAN EXPECT TOMORROW AT THE WASHINGTON HEARING ON SECTION 232 AND AUTOS**

The US Commerce Department has scheduled a hearing tomorrow, in connection with its investigation under Section 232 of the *Trade Expansion Act of 1962*, on the effect of imports of autos and auto parts on national security.

Section 232 does not require that any hearing be held, and a hearing occurs only if the department deems it appropriate. The presiding officer is appointed by the department and decides all procedural matters. Interested parties may appear and present relevant oral or written information. The hearing is described in the regulations as “fact-finding” proceedings at which the rules of evidence do not apply. The presiding officer may question a witness. Interested parties may submit written questions to a witness but questions are posed to a witness only at the discretion of the presiding officer. There is no right of cross-examination.

The hearing is public but information that is marked “National Security Classified” or “Business Confidential” is protected. The Department of Commerce website advises that an official transcript of the hearing will be available on <http://www.regulations.gov> several days after the hearing has concluded

Inside US Trade has reported that the department originally scheduled two days of hearings but subsequently determined that the requests to testify could be accommodated in a single day. The agenda for the one-day hearing lists 46 witnesses and the hearing is scheduled to commence at 8:30 am and to conclude at 5:10 pm, with one half hour break. This timetable leaves less than 10 minutes per witness.

The witnesses include industry associations both US and foreign, the UAW, the EU and various governments (including Canada’s ambassador to the US, Ontario’s new minister of trade, Japan and Korea), the China Chamber of Commerce, and various other businesses and individuals.

The Department has already received more than 2,300 written comments and rebuttal comments that are available for viewing at www.regulations.gov docket number [DOC-2018-0002](https://www.regulations.gov/docket/DOC-2018-0002) (The most active interest group appears to be US classic car collectors.)

Following the hearing and within 270 days of the commencement of the investigation — next February 17 in this case — the department must present its findings and recommendations to the president. (The identical process for steel and aluminum tariffs announced earlier this year took almost the full 270 days.) If the department finds that autos and auto parts are being imported into the United States in “such quantities or under such circumstances as to impair the national security” and if President Trump concurs, the president can take such actions to adjust such imports as he, in his sole judgement, considers appropriate.

The definition of “national security” in Section 232 is virtually open-ended.

The department’s findings and recommendations and any actions taken by the president are not subject to judicial review. This is in stark contrast to other US trade remedy procedures in which the courts have a substantial role to play.

Except for investigations involving petroleum or petroleum products (in which case Section 232 permits either House of Congress to enact a disapproval resolution that effectively shuts down the process), Congress did not retain any ability to control Section 232 investigations.

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