

## Curtis Washington Trade Update – May 2017

This update provides the latest from Washington concerning changes in U.S. trade law and policy.

### On his 100<sup>th</sup> Day in Office President Trump Signs Two Executive Orders Relating to Trade: One Establishing a New Office of Trade and Manufacturing Policy, the Other to Review Trade Agreements for Violations

President Trump signed two executive orders on his 100th day in office relating to trade. The first established a new Office of Trade and Manufacturing Policy (OTMP) within the White House, to be directed by Peter Navarro, who was originally selected to direct the National Trade Council. The goal of this new office is to “defend and serve American workers and domestic manufacturers while advising the President on policies to increase economic growth, decrease the trade deficit, and strengthen the United States manufacturing and defense industrial bases.” According to the order, the Director – Mr. Navarro – will “serve as a liaison between the White House and the Department of Commerce and undertake trade-related special projects as requested by the President.”

The second order directs the Commerce Department and the Office of the U.S. Trade Representative (USTR) to review all U.S. trade agreements and identify violations or abuses of such agreements within 180 days. It also directs these agencies to identify “unfair treatment by trade and investment partners that is harming American workers or domestic manufacturers ... “ and “instances where a trade agreement, investment agreement, trade relation, or trade preference program has failed with regard to such factors as predicted new jobs created, favorable effects on the trade balance, expanded market access, lowered trade barriers, or increased United States exports”. The White House said in a fact sheet that the Commerce Department and USTR will report on problems found in the review as well as possible solutions to them, although the Administration “will not wait 180 days to take action on trade abuses.”

Commerce Secretary Wilbur Ross tied the new order to the recently issued executive order on trade deficits, asking, “Of all the possible causes” of those deficits, “what portion of the problem is attributable to the various trade agreements?” Mr. Ross also said that the review will pay close attention to the World Trade Organization (WTO), which he characterized as an outdated organization with structural problems that the review may attempt to address.

## Commerce Department Initiates Two Section 232 Investigations for Steel and Aluminum

The U.S. Secretary of Commerce has initiated two investigations under Section 232 of the Trade Expansion Act of 1962 – one investigating the effects of steel imports on U.S. national security and another on the effects of aluminum imports on U.S. national security. Section 232 is a rarely used statute that authorizes the President to impose import restrictions to protect national security. Under the statute, the Commerce Department conducts an investigation and issues a recommendation, and the President then decides whether to take action, and if so, in what form.

Following the initiation of each of these investigations, the President signed a presidential memorandum asking Commerce Secretary Wilbur Ross to expedite the investigation. These memoranda overall contain very similar language, with slight differences in the first section regarding “policy.” According to the first memorandum regarding steel, the President stated that “[t]he United States has placed more than 150 antidumping and countervailing duty orders on steel products, but they have not substantially alleviated the negative effects that unfairly traded imports have had on the United States steel industry.” Further, “[t]he artificially low prices caused by excess capacity and unfairly traded imports suppress profits in the American steel industry, which discourages long-term investment in the industry and hinders efforts by American steel producers to research and develop new and better grades of steel.”

Regarding aluminum, the President’s memorandum states “[i]n the case of aluminum, both the United States and global markets for aluminum products are distorted by large volumes of excess capacity much of which results from foreign government subsidies and other unfair practices. Efforts to work with other countries to reduce excess global overcapacity have not succeeded.”

If Commerce Secretary Wilbur Ross, after working with the Defense Department and other agencies as necessary during the investigation, determines that aluminum imports “threaten to impair the national security,” the president then has 90 days to determine whether he concurs -- and to take action to “adjust the imports of an article and its derivatives” or make non-trade-related moves. Such actions must be made no later than 15 days after the president determines a response is warranted.

The President has broad powers under section 232 to impose trade remedies like tariffs and quotas or otherwise to protect the domestic industry through measures aimed at supporting U.S. producers. The last time the Department conducted a Section 232 investigation was in 2001, when the Department concluded that subject imports of steel did not threaten to impair national security. The last action taken by a President to restrict imports after a 232 investigation was in 1982, when President Reagan embargoed all crude oil produced in Libya.

## President Trump Issued Executive Order to Bolster “Buy American” and “Hire American” Policies

With the issuance of a separate Executive Order on Buy American and Hire American, President Trump took a step toward fulfilling a campaign promise to limit the use of foreign workers and promote the purchase of U.S.-sourced materials. According to a press release from the White House, the President believes that reform is needed to support American workers and that the rules associated with America’s trade deals and immigration policies unfairly place American companies and workers at a disadvantage. The press release goes on to explain that the Executive Order targets the abusive use of waivers and exceptions that undermine “Buy American” laws meant to promote American companies.

We note that after the report published by the Government Accountability Office (GAO) in March, discussed in an earlier Washington Trade Update, several Senators pushed for President Trump to address this very issue. Further, the President’s press release cites the findings of the GAO as support for its assertion that the “United States is not getting its fair share of the global government procurement market through the WTO Agreement on Government Procurement.”

The Executive Order instructs every agency and department to conduct a comprehensive assessment aimed at cracking down on weak monitoring or enforcement of Buy American policies, as well as promoting efforts to strengthen compliance with those policies. According to the Order, the Commerce Secretary must prepare, by November 24th, a report for the President that includes “specific recommendations to strengthen implementation of Buy American Laws, including domestic procurement preference policies and program.”

The President also ordered a review of America’s involvement in the WTO’s Agreement on Government Procurement and other trade deals to ensure they meet the “President’s standards.” The President mandated for the first time that the Buy American bidding process must take into account other countries’ unfair trade practices. Finally, regarding the “Buy American agenda”, the President’s order seeks to promote American-made steel by affirming the “melted and poured” standard for steel production in the United States. Trump’s directive stipulates that “produced” in the U.S. means that “all manufacturing processes, from the initial melting stage through the application of coatings” must occur in the United States.

Regarding the President’s agenda for “hire America”, the Executive Order calls on the executive branch to enforce the laws governing the entry of foreign workers into the U.S. economy in order to promote rising wages and more employment. It also directs federal agencies to propose reforms to the H-1B program in order to shift the program back to its original intent and prevent the displacement of American workers.

## With Trump's Presidency, There Has Been an Uptick in Initiated Trade Investigations in 2017

As we pass the 100-day mark on Mr. Trump's Presidency we note the dramatic impact his administration has had on trade-related investigations. Trump pledged on the campaign trail to be more vigilant on trade enforcement and compliance, and in 2017 we have indeed seen a significant increase in initiated investigations. In all of 2016 there were 50 initiated investigations, while in just the first four months of 2017 there have been 18 initiated investigations (suggesting an annual rate of 72).

These cases include investigations under infrequently used statutes, such as Section 232 regarding national security and Section 201 governing global safeguards. Others have been initiated under the antidumping and countervailing duty provisions of Title VII of the Tariff Act of 1930, which have been used more frequently recently than in previous years.

## USTR Nominee Robert Lighthizer Received Unanimous Support from Senate Finance Committee and Will Now Move to a Vote from the Full Senate

President Trump nearly has his nominee for U.S. Trade Representative in place, after the Senate Finance Committee voted unanimously to approve Lighthizer's appointment and to provide the statutory waiver that has so far been controversial among Senators. However, Senate Majority Leader Mitch McConnell said that the full Senate vote for Lighthizer will not occur until the waiver and miners benefits bill are approved, which are expected to be dealt with as part of a continuing resolution to fund the government. Despite considerable talk about NAFTA renegotiations, we expect that real movement on the renegotiation will not begin until Lighthizer is confirmed as the USTR. We also note that while Lighthizer's nomination is key for U.S. trade happenings, President Trump still – 100 days in – has to nominate 468 "key positions" that require Senate confirmation.