Securing North American Steel Production and Products through a Unified Position on Section 232 of NAFTA

Issue

The United States review of Section 232 of the Trade Expansion Act of 1962 and the potential result of the investigation of the Steel Industry as a "core industry' and "critical element" to U.S. national security could have a crippling effect on the Canadian steel industry and the 22,000 direct jobs that it generates.

Background

On April 20, 2017, the Trump Administration announced the initiation of an investigation under Section 232 of the Trade Expansion Act of 1962 to assess the impact of steel imports on U.S. national security.

Should the Trump administration take significant action, Canada would need to adjust accordingly. Otherwise, we stand to become a potential recipient of those steel imports previously destined to the U.S. market. The resulting economic impact would be devastating to many communities throughout Canada.

Under Section 232, Secretary of Commerce Wilbur Ross will have 270 days to determine whether steel is being "imported into the United States in such quantities or under such circumstances as to threaten to impair the national security." Based on the Commerce Secretary's findings, the President must issue a report to Congress and may take such actions as he deems necessary to "adjust" steel imports "so that such imports will not threaten to impair the national security."

Regarding the Investigation Pursuant to Section 232 (B). What it will include is consideration of, "one, the domestic production needed for our projected national defense requirements; two, the domestic industry's capacity to meet those requirements; third, the related human and material resources; fourth, the importation of goods in terms of their quantities and use; fifth, the close relation of national economic welfare to national security; sixth, the loss of skills and investment, substantial unemployment and decrease in government revenue; and finally, the impact of foreign competition on specific domestic industries and the impact of displacement of a domestic product by excess of import. "

Canada has been a participant in addressing global steel issues, the Previous U.S. Action on Global Steel Issues by the Obama Administration also sought to address global steel trade issues. Last November, government officials discussed steel issues with their Chinese counterparts during the Joint Commission on Commerce and Trade ("JCCT") meetings in Washington, D.C. A press report of that November 21-23 meeting states that "[e]xcess capacity and structural problems in steel and other industries is a global challenge which requires collective responses." Pursuant to these JCCT discussions, the Global Forum on Steel Excess Capacity was launched in December 2016.

Even before the JCCT, U.S. agencies had engaged in fact-finding with respect to global steel trade issues. In April 2016, U.S. agencies convened public hearings concerning "Policy Recommendations on the Global Steel Industry Situation and the Impact on U.S. Steel Industry and Market." The United States has also engaged internationally on steel capacity issues. On April 11, 2016, the U.S., Canada, and Mexico released a joint statement calling for effective and immediate commitments to address "global steel excess capacity." Shortly thereafter, on April 18, 2016, the Belgian government and the OECD hosted a meeting in Brussels of senior officials and private sector representatives from the U.S., China, and around 30 other countries to address excess capacity in the steel sector. The United States has issued 125 (26 outstanding) disputes at the WTO and Canada to a far less degree, with currently none outstanding.

Implications for Canada are severe.

- The Trump administration's emphasis on trade enforcement and increased willingness to seek flexibility in tariffs will require companies reliant on U.S. exports to seek alternate domestic sources of goods.
- Operating companies may need to budget for changes in suppliers and vendors, and investors should closely examine the import profiles of target companies.

- While the investigation does not target a particular country, the impact is likely to be felt most strongly with respect to steel from China, especially steel that has been further manufactured into value-added products in third countries such as would be the case with Canada. Indeed, the plurality (28) of the 152 steel-related AD/CVD orders in place have been imposed on Chinese steel products.
- Sourcing from China or exporters in third countries that rely on Chinese steel in particular will continue to entail heightened risk of elevated duties and U.S. import compliance concerns, in addition to the existing Foreign Corrupt Practices ("FCPA") and other international risks that often accompany business in China.
- While the current investigation relates to steel imports, the presidential memorandum notes that steel is one of several "core industries," including aluminum, vehicles, aircraft, shipbuilding and semiconductors.
- Operating companies and sponsors doing business with a nexus to these sectors should similarly consider how the Trump administration's international trade priorities may affect their bottom line.

Canadian and U.S. trade relations are the key to deriving the future benefits of steel production in North America, particularly in those communities in which production, fabricating and manufacturing businesses are located.

Between Canada and the United States, wages in the steel industry are relatively comparable, as are other costs of production on a relative basis. The carbon footprint of steel production in both countries is also comparable. The relative market share of each other's markets generally reflect the size and capacity of each country's market. In some cases, non-market countries of origin actually have a greater share of the U.S. market than does Canada (as is the case with China).

Canada and the U.S. share many similar trade concerns related to steel and time is of the essence to ensure that the trade relationship between Canada and the United States is not collateral damage from "Buy America" policies. With the U.S. initiating the investigation pursuant to Section 232 (B) of the Trade Expansion Act,., Canada has 270 days or less in which to ensure the future of the steel industry and many of its related businesses.

Recommendations

That the federal government:

1. Under NAFTA section 232, stress that free and full access to each other's markets is the key to avoid reciprocity of a "Buy America" trade stance.
2. Stress to all levels of U.S. Government that a disruption to Canadian markets creates uncertainty in the U.S. market.