

# CLIENT ALERTS

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## President Trump Fails to Act Before 180 Day Deadline on Section 232 Auto Tariffs; Has the Clock Run Out?

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*Court of International Trade Action Questions Presidential Authority to Act After Passage of Statutory Time Limits*

Although the November 14, 2019 deadline has now passed, President Trump has yet to take action on implementing Section 232 tariffs on automobiles and auto parts recommended by a U.S. Department of Commerce investigation last year. The President directed the U.S. Trade Representative to negotiate agreements with automobile exporting countries and noted that “if agreements are not reached within 180 days, the president will determine whether and what further action needs to be taken.”

A recent decision of the Court of International Trade (CIT) on November 15, 2019, in [Transpacific Steel LLC v United States et. al.](#) has fueled the argument that the President’s Section 232 powers expire if he doesn’t take action within certain time limits. In [Transpacific](#), a case challenging a doubling of the existing Section 232 tariff against Turkey, a three-judge CIT panel denied the governments motion to dismiss, stating that “...the Plaintiff has stated a claim for refund because after the time periods set by Congress for Presidential action had passed, the President lacked the power to take new action.”

This Section 232 investigation on automobiles and auto parts started in May 2018, under Section 232 of the Trade Expansion Act of 1982 (19 USC § 1862, as amended). Section 232, known as the national security clause, gives the President broad discretion to impose tariffs on imports that could adversely affect national security after an investigation by the Department of Commerce. President Trump also employed this statute, previously unused since 1982, to impose tariffs on imported steel and aluminum in 2018.

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On February 17, 2019, the Commerce Department announced its issuance of a report to the President, but the text of this report was never released to the public but recommended actions to adjust automotive imports so that they will “not threaten to impair the national security” <https://www.nytimes.com/2019/11/11/business/trump-auto-tariffs.html>. Therefore, the President had determined he had the authority to increase the tariffs on automobiles most likely to 25%, but delayed the announcement and implementation.

The automotive and auto parts industry was united in its opposition to the 232 tariffs on automobiles. The Trump Administration has particularly weaponized the threat of these tariffs against Europe. Mexico and Canada have been specifically exempted as part of the November 30, 2018, Side Letter Agreements in exchange for quotas on passenger vehicles, light trucks, and auto parts. The White House reportedly promised Japan an exemption from any 232 tariffs on autos and auto parts as part of the new trade agreement recently negotiated by Japan and the U.S., but that commitment has not yet been put in writing.

Observers believe the main purpose of Section 232 tariffs on autos and auto parts was designed to put pressure on the European Union to conclude a trade agreement with the United States. It is reported that European automakers – particularly German automakers (Germany had a \$69 billion trade surplus with the U.S. in 2018) – have been working hard to reach an agreement with the Trump administration ahead of the deadline. The German car industry is reportedly promising to create 25,000 jobs at factories in the United States, increase their investment in which currently includes large BMW manufacturing facilities in South Carolina, Mercedes Benz in Alabama, and Volkswagen in Tennessee.

In view of the new CIT decision in Transpacific Steel LLC, the President’s failure to act by November 14, 2019, might open any decision now to court challenges. However, it is possible that the President could still take action under other laws such as the International Emergency Economic Powers Act (*IEEPA*), 50 USC Section 1702, or other laws to accomplish this action. This was the law cited by the White House in June 2019 to authorize a proposed escalating tariff of 5% – 25% against Mexico unless action was taken by them in regard to immigration from Mexico. Ultimately, the Administration reached a deal with Mexico that avoided such tariffs.

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