

Court of Appeals Upholds Increases to Section 232 Tariffs on Turkish Steel

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On July 13, 2021, the U.S. Court of Appeals for the Federal Circuit (CAFC) released its opinion in an appeal concerning Section 232 duties on Turkish steel products. In a 2-1 decision, the appeals court reversed a lower court finding that the President did not have the authority to raise the Section 232 tariffs on Turkish steel from 25% to 50%.

Section 232 of the Trade Expansion Act of 1962 authorizes the President to take action to adjust imports that threaten to impair national security. In March 2018, after receiving a report from the Secretary of Commerce finding that imported steel goods threatened national security, President Trump imposed 25% tariffs on steel products from a number of countries, including Turkey. In August 2018, the President increased the duties on Turkish steel products to 50%. The President subsequently lowered the duties on Turkish products back to 25%, in May 2019, after improvements in domestic steel producers' capacity utilization.

Importers of Turkish steel goods appealed the increase in the duties and last year, the U.S. Court of International Trade (CIT) found that the President violated Section 232's timing provisions in raising the duties on Turkish steel. The CIT also found that importers' equal-protection rights were violated by the increase in duties.

Today's opinion from the CAFC reverses the CIT on both counts. The opinion recognizes that the President has broad authority to act under Section 232 based on national security concerns, including the power to take ongoing actions to adjust imports. The opinion also finds that there was a rational basis for the increase in tariffs on Turkish imports, given that Turkey is a major exporter of steel goods

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to the United States, and was also flagged in the Secretary of Commerce's report as a country on which the President should consider increased duties.

"We conclude that the best reading of the statutory text ... understood in context and in light of the evident purpose of the statute and the history of predecessor enactments and their implementation, is that the authority of the President includes authority to adopt and carry out a plan of action that allows adjustments of specific measures, including by increasing import restrictions, in carrying out the plan over time," the court said.

The majority opinion was written by Judge Taranto and joined by Judge Chen. The 2-1 opinion included a dissent from Judge Reyna.

The Turkish importers that brought the original case have 45 days in which to petition for rehearing or for en banc review, or, alternatively, 90 days in which to file petitions for Supreme Court review.