Article 232: Aluminium and Steel

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Section 232 Tariffs on Aluminum and Steel

Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962

BACKGROUND

- On March 8, 2018, the President issued Proclamations 9704 and 9705 on Adjusting Imports of Steel and Aluminum into the United States, under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), providing for additional import duties for steel mill and aluminum articles, effective March 23, 2018.

  (See the Federal Register, 83 FR 11619 and 83 FR 11625, March 15, 2018.)

- On March 22, 2018, the President issued Proclamations on Adjusting Imports of Steel and Aluminum into the United States.

  (See the Federal Register, 83 FR 13355 and 83 FR 13361, March 28, 2018.)

- On April 30, 2018, the President issued Proclamations 9739 and 9740 on Adjusting Imports of Steel and Aluminum into the United States.

  (See the Federal Register, 83 FR 20683 and 83 FR 20677, May 7, 2018.)

- On May 31, 2018, the President issued Proclamations on Adjusting Imports of Steel and Aluminum into the United States.

COMMODITY

- Steel mill and aluminum articles, as specified in the Presidential Proclamations.

COUNTRIES COVERED BY SECTION 232 IMPORT DUTIES

- Please note that the Section 232 measures are based on the country of origin, not the country of export.

Steel

- As of June 1, 2018: All countries of origin except Argentina, Australia, Brazil, and South Korea.

Aluminum

- As of June 1, 2018: All countries of origin except Argentina and Australia.

COUNTRIES COVERED BY SECTION 232 ABSOLUTE QUOTAS

Steel

- As of June 1, 2018: Argentina, Brazil, and South Korea.

Aluminum

- As of June 1, 2018: Argentina.
- For both steel and aluminum, imports of United States origin are not covered by the Section 232 measures.

FILING INSTRUCTIONS

Section 232 Import Duties

- Use non-quota entry type codes.
- *UPDATE: As of June 1, 2018, for all imports of aluminum from South Korea, importers should also use non-quota entry type codes.*

Steel Products

- In addition to reporting the regular Chapters 72 and 73 of the Harmonized Tariff Schedule (HTS) classification for the imported merchandise, importers shall report the following HTS classification for imported merchandise subject to the additional duty: 9903.80.01

(25 percent *ad valorem* additional duty for steel mill products).

Aluminum Products

- In addition to reporting the regular Chapter 76 of the HTS classification for the imported merchandise, importers shall report the following HTS classification for imported merchandise subject to the additional duty: 9903.85.01

(10 percent *ad valorem* additional duty for aluminum products)

SECTION 232 ABSOLUTE QUOTAS

- Use quota entry type codes (entry types 02, 06, 07, 12, 23, 32, 38, or 52). For further guidance, see CBP quota bulletins at https://www.cbp.gov/trade/quota/bulletins

GENERALIZED SYSTEM OF PREFERENCES (GSP) AND AFRICAN GROWTH AND OPPORTUNITY ACT (AGOA)

- **GSP** and **AGOA**-eligible goods that are subject to Section 232 duties or quotas may not receive GSP or AGOA duty preference in accordance with 19 USC 2463(b)(2).

- On imports subject to Section 232 duties or quotas (including imports from Argentina and Brazil), in addition to any applicable Section 232 duties, importers should pay the normal trade relations (column 1) duty rates and not submit the GSP Special Program Indicator (SPI) “A” or the AGOA SPI “D”

Section 232 of the Trade Expansion Act of 1962

Background

- On February 16, 2018, the Department of Commerce (Commerce) published its investigations into the national security implications of U.S. imports of steel and aluminum.
- In each case, Commerce determined that current imports threaten to impair national security. Such investigations are carried out pursuant to Sec. 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862, as amended).

- Section 232 is sometimes called the "national security clause," because it provides the President with the ability to impose restrictions on imports that Commerce determines threaten to impair the national security. In 2001, under the last Section 232 investigation, Commerce found that imports of iron ore and finished steel did not pose a national security threat.

Section 232 Process

- Section 232 allows any department or agency head, or any “interested party”, to request Commerce to initiate an investigation to ascertain the effect of specific imports on the national security of the United States. Commerce may also self-initiate an investigation.

Investigation:

- Once a Section 232 investigation is requested in writing, Commerce must “immediately initiate an appropriate investigation to determine the effects on the national security” of the subject imports.

- After consulting with the Secretary of Defense, other “appropriate officers of the United States,” and the public, if appropriate, Commerce has 270 days from the initiation date to prepare a report advising the President whether the targeted product is being imported “in certain quantities or under such circumstances” to impair U.S. national security, and to provide recommendations for action or inaction based on the findings.

Investigation (Continued)

- The Bureau of Industry and Security (BIS) at Commerce conducts the investigation based on federal regulations codified in 15 CFR § 705 (Effect of Imported Articles on the National Security).

- In terms of national security, Commerce considers:
  1. existing domestic production of the product;
  2. future capacity needed;
  3. the manpower, raw materials, production equipment, facilities, and other supplies needed to meet projected national defense requirements;
  4. growth requirements, including the investment, exploration, and development to meet them; and
  5. any other relevant factors.

Investigation (Continued)

- Regarding the subject imports, Commerce must consider:

1. the impact of foreign competition on the domestic industry deemed essential for national security;

2. the effects that the “displacement of domestic products” cause, including substantial unemployment, decreases in public revenue, loss of investment, special skills, or production capacity;

3. any other relevant factors that are causing, or will cause a weakening in the national economy. Public notices of the initiation, requests for public comment, and an Executive Summary of the final report (excluding any confidential or classified material) must be published in the Federal Register. Hearings may be held, if appropriate.

Investigation (Continued)

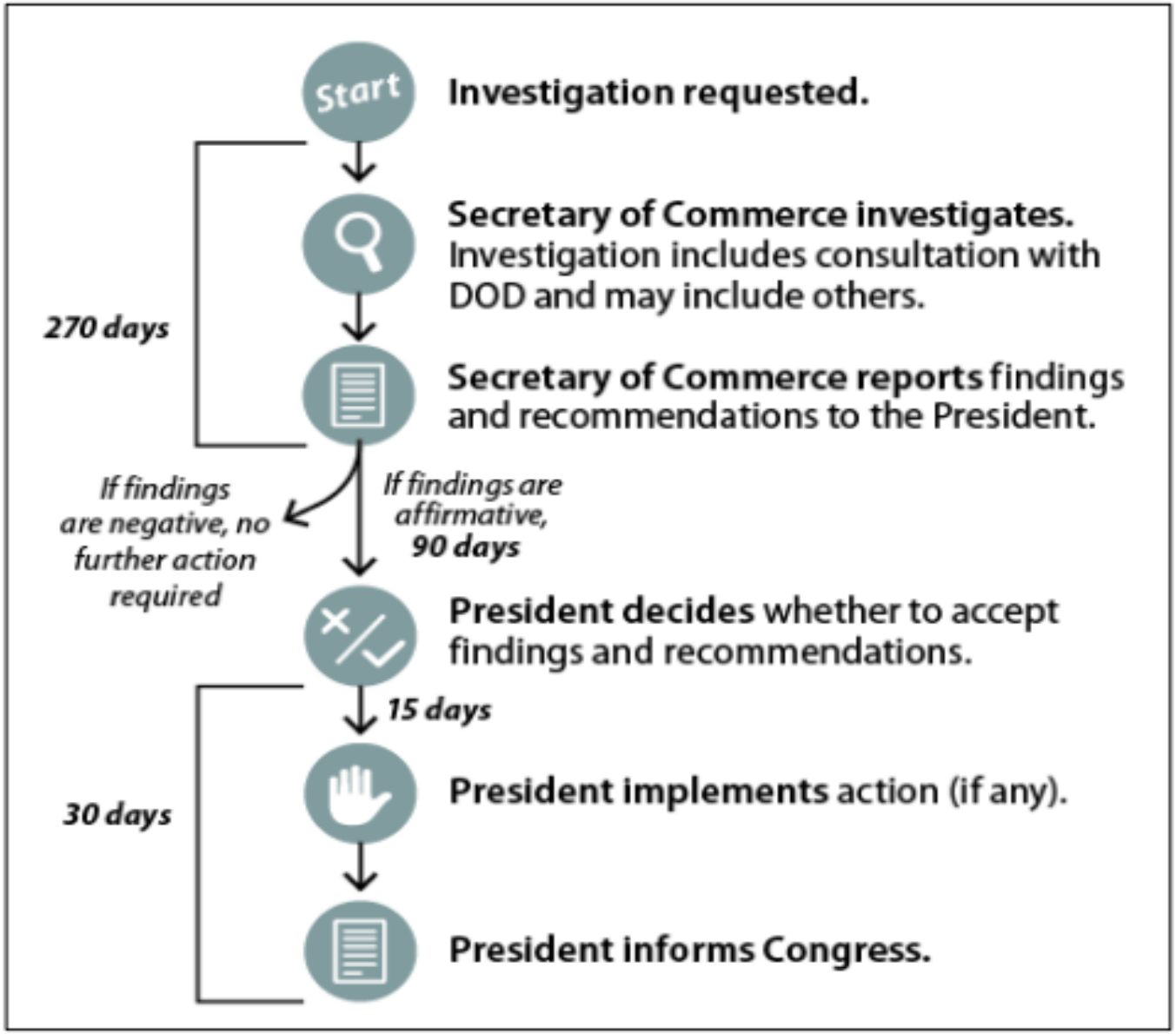
- Aluminum or steel articles shall not be subject upon entry for consumption to Section 232 duties, merely by reason of manufacture in a U.S. foreign trade zone. However, articles admitted to a U.S. foreign trade zone in “privileged foreign status,” shall retain that status consistent with 19 CFR 146.41(e).

- The merchandise covered by the additional duties and quota may also be subject to antidumping and countervailing duties.

Presidential Action and Notification

- If Commerce finds in the negative, Commerce informs the President and no further action is required. If Commerce determines in the affirmative, the President, upon receipt of the report, has 90 days to
  1. determine whether he concurs with its findings; and
  2. if the President concurs, determine the nature and duration of the action to be taken to adjust the subject imports.
- The President may decide to impose tariffs or quotas to offset the adverse effect, without any limits on the duration on tariff or quota amounts. The President has discretion to exclude specific product categories, countries, or provide other exemptions.
- After making a determination, the President must implement the action within 15 days, and submit a written statement to Congress explaining the actions or inaction within 30 days. The President must also publish his determination in the Federal Register.

Section 232 Investigation Process



Source: CRS graphic based on 19 U.S.C. § 1862.

Section 232 Actions

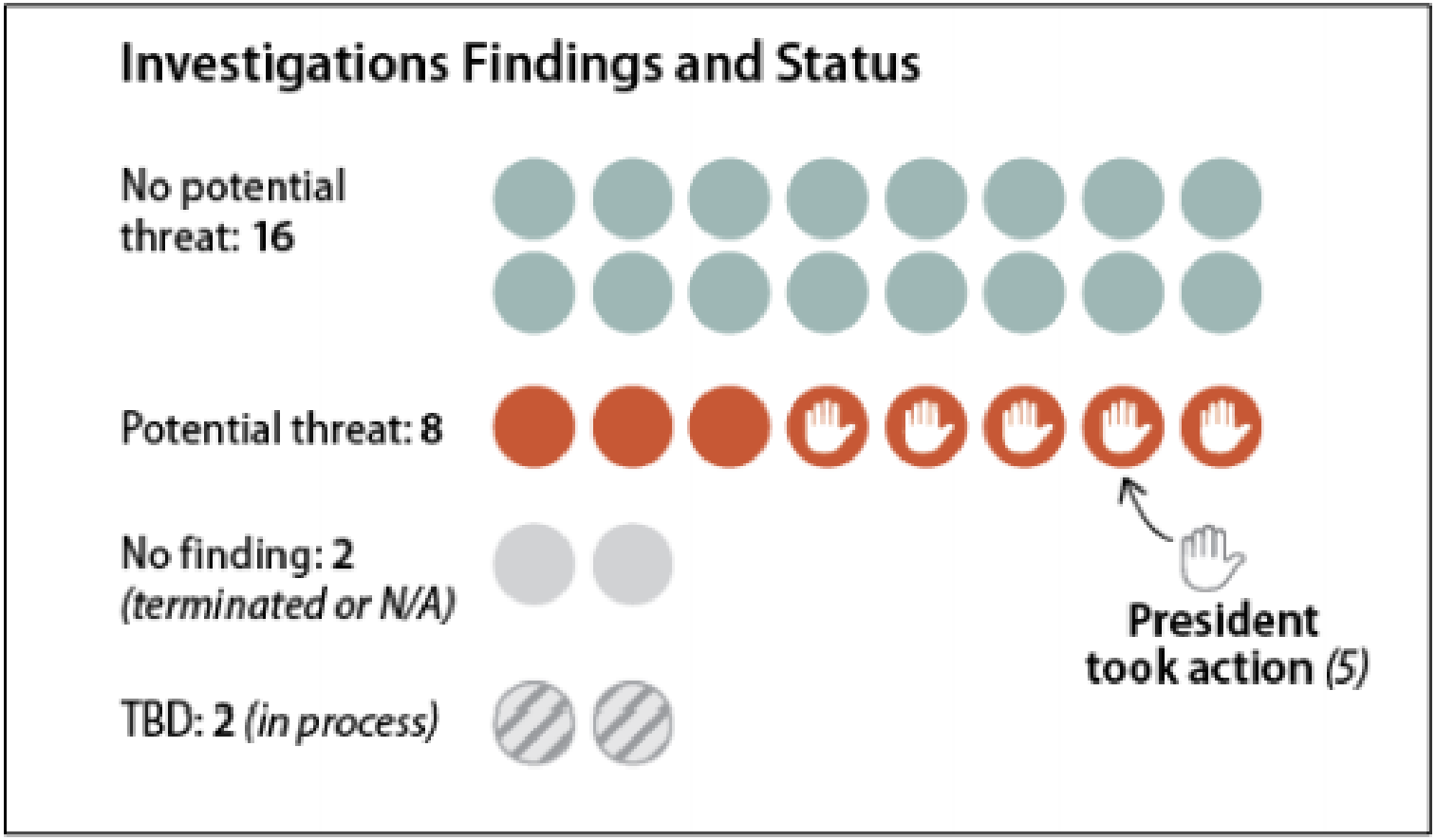
- Prior to the Trump Administration, 26 Section 232 national security investigations were initiated, beginning in 1963. Previous investigations of manufactured goods were more tightly focused on specific products, including antifriction bearings and gears and gearing products.

- Of the 26 cases initiated (excluding investigations currently underway), Commerce made negative determinations 62% of the time. When Commerce made positive determinations, the President recommended action 5 times (Figure 2).

- These determinations and actions were all related to petroleum products or crude oil. One of these actions, a conservation fee added to petroleum products, was held illegal by a federal court.

- Of the remaining 4 actions, 2 were based on the Mandatory Oil Import Program, an initiative that predated enactment of Section 232. Therefore, some commentators state that only 2 actions derived from positive determinations reached in Section 232 investigations. Those actions were an embargo on crude oil from Iran in 1979, and an embargo on crude oil from Libya in 1982.

Figure 2. Section 232 Investigations



Source: CRS Graphic based on BIS data (https://www.bis.doc.gov/).

Trump Administration and Section 232

- Commerce initiated its steel investigation on April 19 (82 FR 19205) and its aluminum investigation on April 26, 2017 (82 FR 21509). Commerce sent both reports to the President on January 22, 2018, and released redacted versions in February.

- In each investigation, Commerce analyzed current and future requirements for national defense and 16 specific critical infrastructure sectors.

- In each case, Commerce determined that the present quantities and circumstance of imports threaten to impair the national security as defined in Section 232 and provided recommendations for implementing tariffs and/or quotas. The President must decide on a course of action by April 11, 2018, for steel imports, and by April 19 for aluminum imports.

- Secretary of Commerce Wilbur Ross is also reportedly considering initiating additional investigations into other specific imports such as uranium.

Wilbur Ross

How Does Section 232 Differ from Other Trade Enforcement Tools?

- Section 232 is one of several tools that the United States has at its disposal to address unfair trade practices.
  - For example, the International Emergency Economic Powers Act (IEEPA, 50 U.S.C. § 1702) grants the President broad authority to act in cases of national emergency.

- Section 201 of the Trade Act of 1974 (19 U.S.C. § 2252 et seq.) addresses import surges of fairly traded goods. Rather than focusing on national security, however, Section 201 investigations, conducted by the U.S. International Trade Commission (USITC), are industry-focused, temporary, and based on helping the U.S. industry return to health. Presidential action is also required in Section 201.

How Does Section 232 Differ from Other Trade Enforcement Tools? (Continued)

- Other trade remedies address unfairly traded goods; for example, antidumping (AD, 19 U.S.C. §1673 et seq.) and countervailing duty (CVD, 19 U.S.C. §1671 et seq.) laws authorize the imposition of duties if

1. the International Trade Administration of the Department of Commerce (ITA) determines that imports of a product are being, or are likely to be, sold in the United States at less-than-fair value, or that an imported product is being subsidized by the government or any public entity; and

2. the USITC determines that an industry in the United States is materially injured or threatened with material injury due to imports of that merchandise. In AD and CVD cases, the remedy is an additional duty calculated to offset the amount of dumping or subsidy. Presidential action is not required.

Policy Implications

- The Commerce and Defense Departments have broad discretion in Section 232 cases to define the scope of the investigation.

- Some observers are concerned that this discretion could create a slippery slope as to what products are considered to have “national security” implications.

- They assert that too broad a definition could lead to retaliation or imitation by trading partners who invoke national security to limit or block market access to U.S. exports.

- However, since most investigations to date have ended with negative determinations, this assertion has not proven to be true in a practical sense.

Policy Implications (continued)

- While unilateral action may appear to be counter to U.S. trade liberalization commitments under the World Trade Organization (WTO) agreements, Article XXI of the General Agreement on Tariffs and Trade (GATT), allows WTO members to take measures in order to protect “essential security interests.”

- Nonetheless, U.S. actions under Section 232 could be challenged under WTO dispute settlement procedures. However, the WTO does not specifically define the security term, and WTO members have asserted broad authority to interpret this provision.

WORLD TRADE ORGANIZATION

Issues for Congress

- The Commerce Clause of the U.S. Constitution (Article 1, Section 8, Clause 3) gives Congress the power “to regulate Commerce with foreign Nations.” Under Section 232, Congress delegated some of this authority to the President.

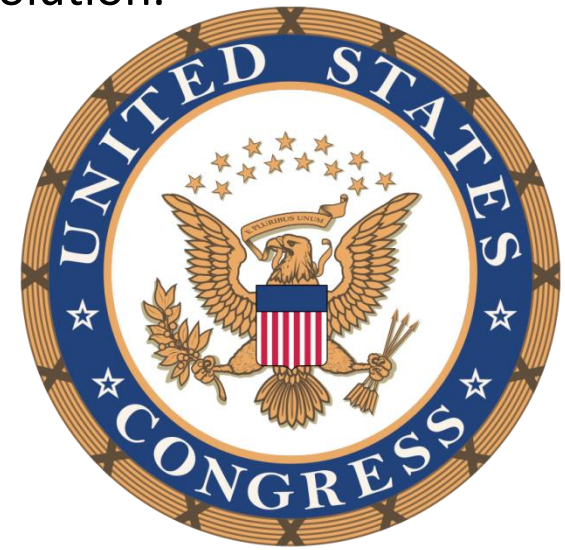
- Congress could exercise its authority by conducting oversight of ongoing Section 232 investigations. Congress could also hold hearings on the U.S. steel or aluminum industries, or on other import-sensitive industries.

Issues for Congress (Continued)

- While some in Congress may view Section 232 as an effective means to address trade-related national security concerns, others may not agree with potential trade restrictive actions.

- When a controversy arose in 1980 over the President's remedy on petroleum products, Congress amended the law so that passage of a resolution of disapproval would nullify any presidential action on petroleum (19 U.S.C. 1862(f)).

- Congress could consider amending paragraph (f) to broaden the scope of products subject to a disapproval resolution.



Article XXI of the GATT 1994

- Article XXI of the GATT 1994, entitled ‘Security Exceptions’. States:

Nothing in this Agreement shall be constructed

a) To require any [Member] to furnish any information the disclosure of which it considers contrary to its essential security interests

b) To prevent any [Member] from taking any action which it considers necessary for the protection of its essential security interests

   I. Relating to fissionable materials or the materials from which they are derived;

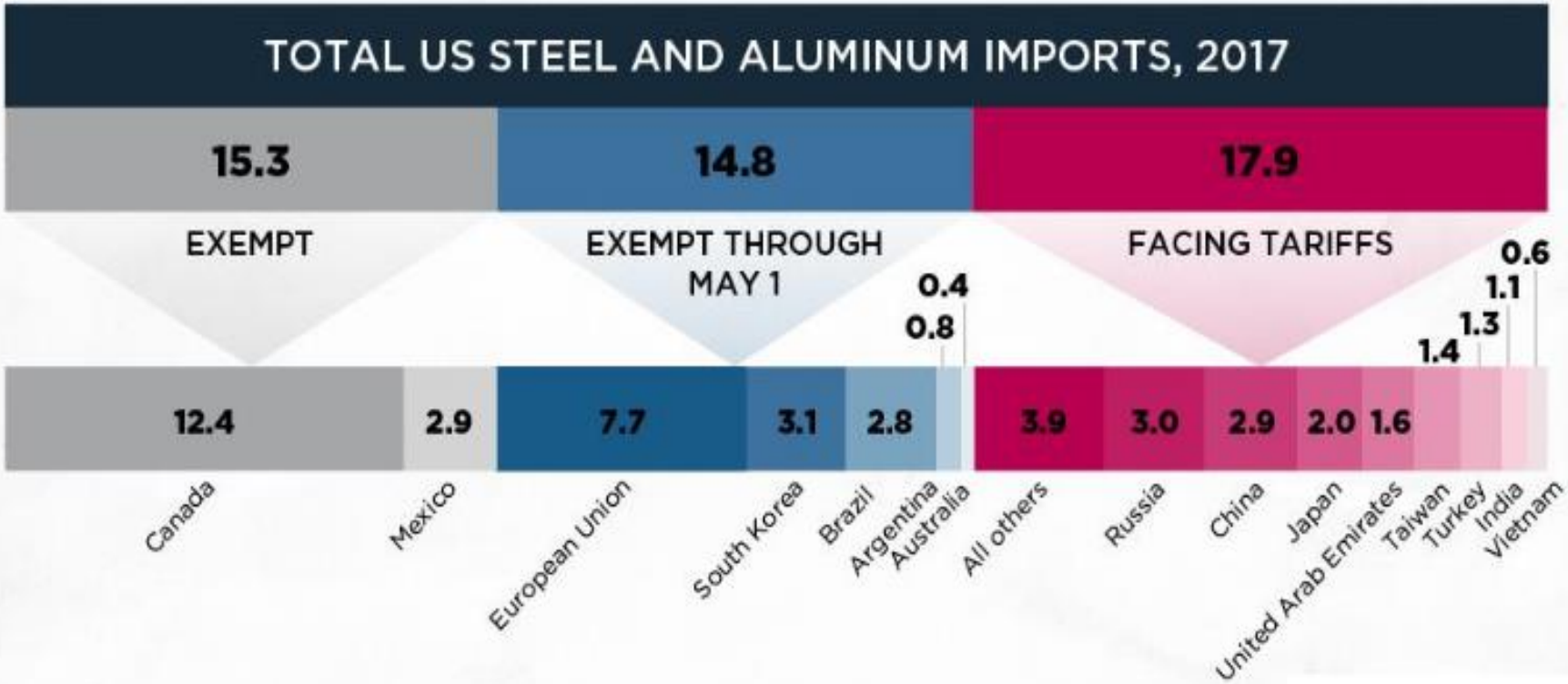
   II. Relating to the traffic in arms, ammunitions and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

   III. Taken in time of war or other emergency in international relations; or

c) To prevent any [Member] from taking any action pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security

Who Is Affected by Trump's Steel and Aluminum Tariffs?

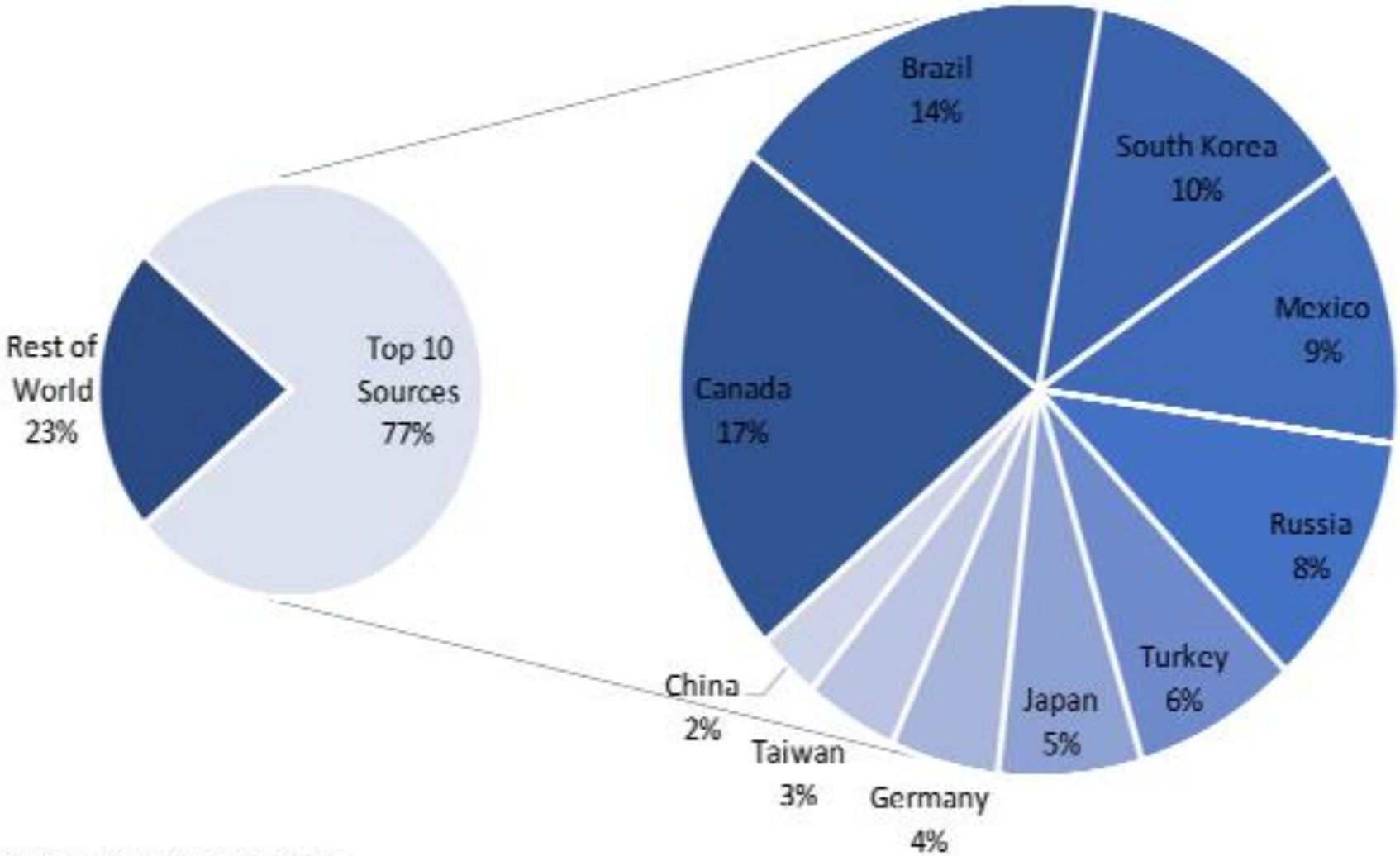
Billions of dollars



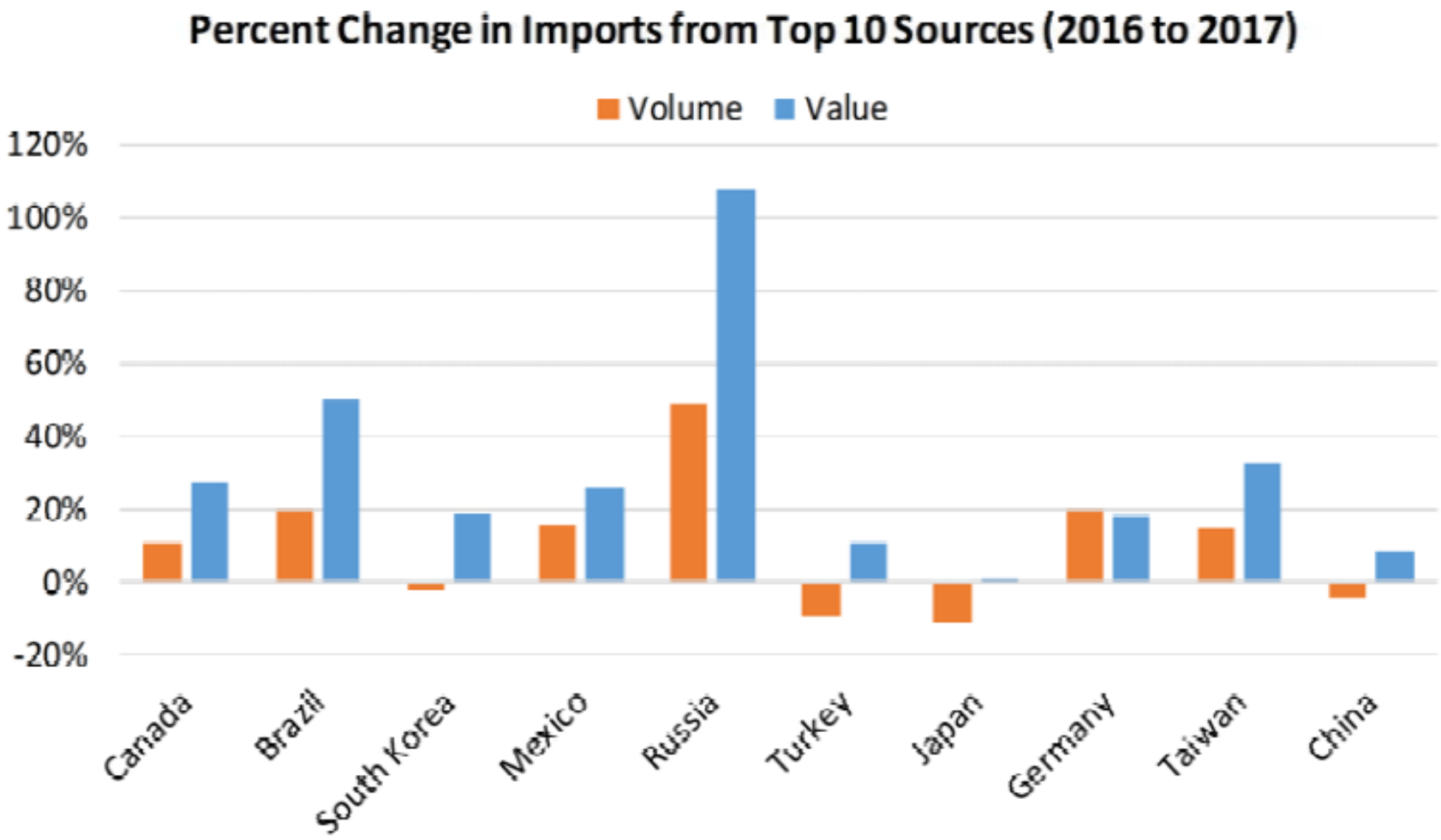
Source: See figure 1 in blog post, "Trump's Long-awaited Steel and Aluminum Tariffs Are Just the Beginning."
Note: Figures are up-to-date as of March 28, 2018.
Learn more at https://piie.com/research/piie-charts/who-affected-trumps-steel-and-aluminum-tariffs
Calculations by Chad P. Bown.

U.S. Steel Imports - Top 10 Sources

2017 - Millions of Metric Tons

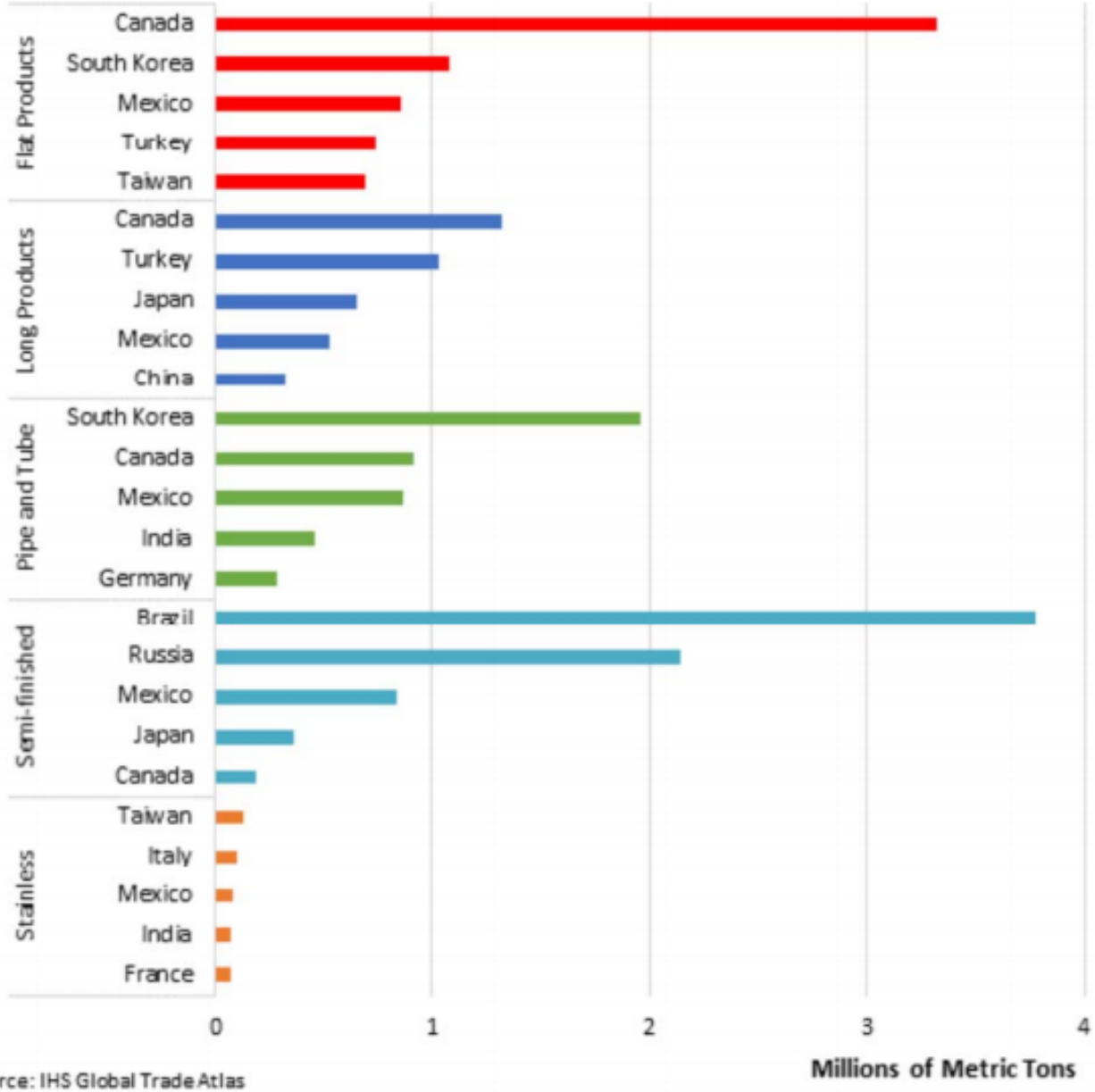


Source: IHS Global Trade Atlas



Source: IHS Global Trade Atlas

U.S. Top 5 Import Sources by Product - 2017



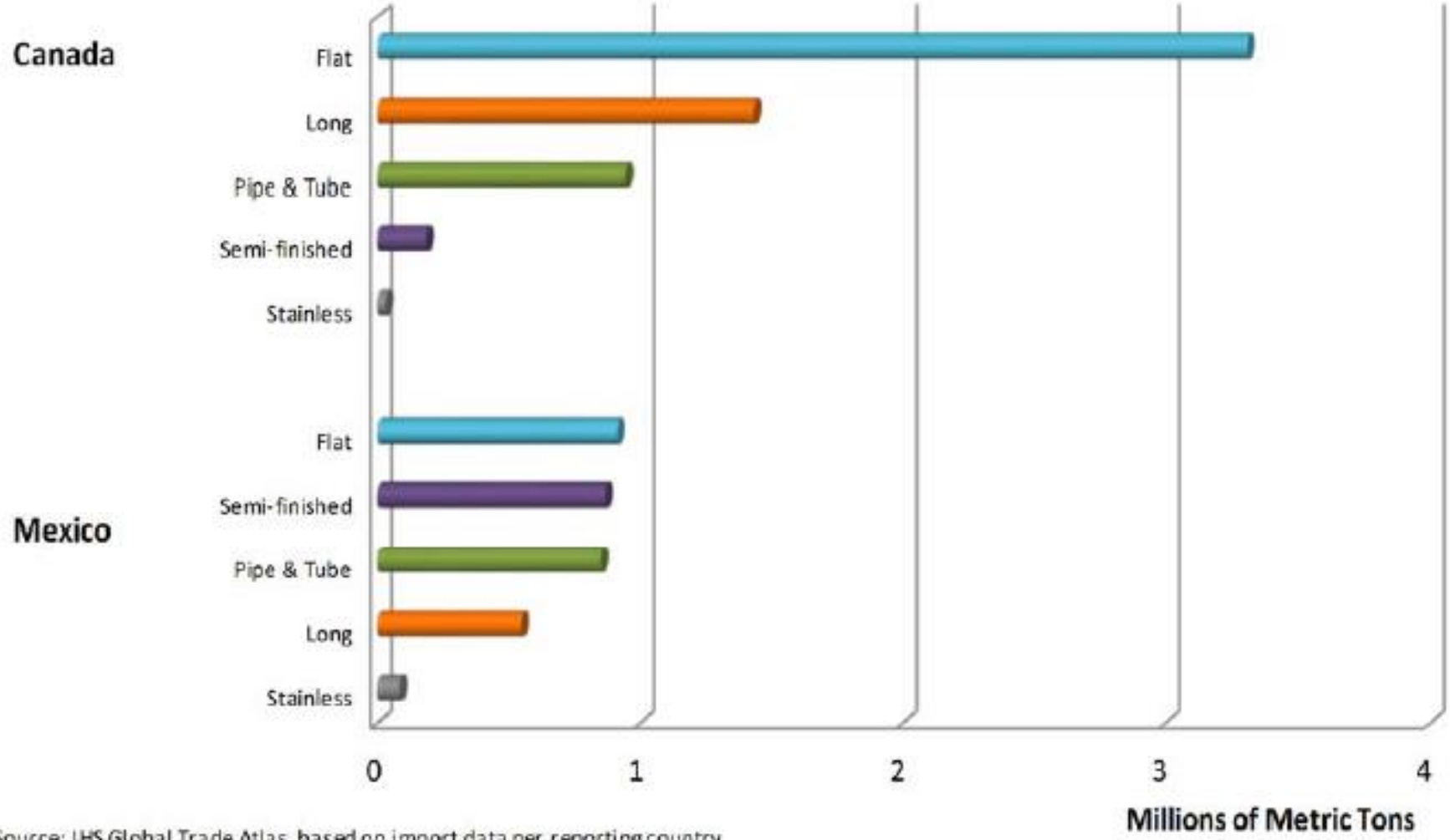
Source: IHS Global Trade Atlas

U.S. Steel Export Market Share				
Top 10 Import Sources	**Share of Exports to U.S - 2016**	**U.S.'s Rank in 2016**	**Share of Exports to U.S. - 2017**	**U.S. Rank in 2017**
Canada	87.7%	1	89.9%	1
Brazil	**34.0%**	**1**	**32.8%**	**1**
South Korea	12.1%	2	11.2%	3
Mexico	**72.9%**	**1**	**65.0%**	**1**
Russia	2.3%	11	N/A	0
Turkey	**15.0%**	**1**	**10.7%**	**1**
Japan	4.9%	7	4.7%	8
Germany	**4.0%**	**9**	**N/A**	**0**
Taiwan	9.2%	3	9.6%	3
China	**0.8%**	**25**	**1.1%**	**26**

Source: IHS Global Trade Atlas, based on import data per reporting country

2017 Data not available for Russia and Germany

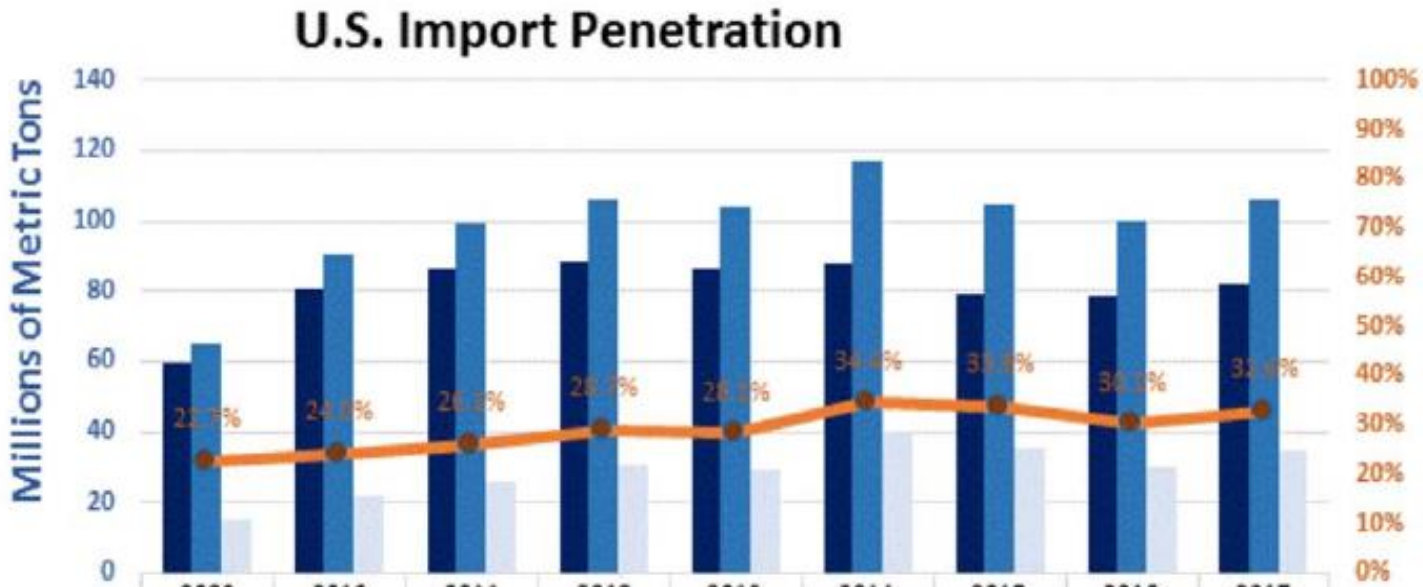
Steel Export Composition of Top Market-Share Countries - 2017



Source: IHS Global Trade Atlas, based on import data per reporting country

Steel Imports Report: **United States**

Overall Production and Import Penetration



	2009	2010	2011	2012	2013	2014	2015	2016	2017
Production	59.4	80.5	86.4	88.7	86.9	88.2	78.8	78.6	81.6
Apparent Consumption	65.1	90.7	99.6	106.0	104.0	117.0	104.6	99.7	106.2
Imports	14.8	21.8	26.0	30.5	29.2	40.3	35.4	30.0	34.6
Import Penetration	22.7%	24.0%	26.1%	28.7%	28.1%	34.4%	33.8%	30.1%	32.6%

Sources: World Steel Association; IHS Global Trade Atlas

United States Top Steel Producers in 2016

Rank	Company	Production (mmt)	Main Products
1	Nucor Corporation	22	Bars, beams, sheets, plate
2	United States Steel Corp.	14	Hot-rolled, hardware, fittings
3	ArcelorMittal USA*	12	Flat products, long products, tubular products
4	Gerdau North America*	N/A	Beams, pilings, billets, rebar, wire rod
5	Steel Dynamics Inc.	8.6	Sheets, bars, beams
6	AK Steel Corporation	5.5	Carbon, stainless, electrical
7	Commercial Metals Co.	2.3	Long products, structural

Source: Bloomberg; Company websites
*Denotes foreign-owned producer

U.S. Trade Remedies in Effect Against Steel Mill Imports

Country	AD	CVD	Suspension Agreements and Undertakings	Total
Australia	1			1
Austria	1			1
Belarus	1			1
Belgium	2			2
Brazil	6	3		9
China	16	12		28
France	1			1
Germany	3			3
India	9	6		15
Indonesia	4	2		6
Italy	2	1		3
Japan	14			14
Latvia	1			1
Malaysia	1			1
Mexico	6			6
Moldova	2			2
Netherlands	1			1
Oman	1			1
Pakistan	1			1
Poland	1			1
Romania	1			1
Russia	1		1	2
South Africa	2	1		3
South Korea	14	6		20
Spain	1			1
Sweden	1			1
Taiwan	12	1		13
Thailand	3	1		4
Trinidad &Tobago	1			1
Turkey	8	6		13
Ukraine	2		2	4
United Arab Emirates	1			1
United Kingdom	2			2
Vietnam	2			2
TOTAL	**125**	**39**	**3**	**167**

Source: World Trade Organization, through December 31, 2017

Countries Exporting Aluminum to America

- 15 countries from which the United States purchases the highest dollar value worth of aluminum. These suppliers accounted for 86.3% of all US aluminum imports during 2017.

1. Canada: US$8.5 billion (36.3% of total aluminum exports)
2. China: $3.5 billion (15.1%)
3. Russia: $1.6 billion (7%)
4. United Arab Emirates: $1.5 billion (6.5%)
5. Mexico: $1 billion (4.3%)
6. Bahrain: $621.1 million (2.7%)
7. Argentina: $570.8 million (2.4%)
8. Germany: $561.7 million (2.4%)
9. India: $484.1 million (2.1%)
10. South Africa: $354.1 million (1.5%)
11. Qatar: $307.4 million (1.3%)
12. Japan: $295.6 million (1.3%)
13. France: $294.1 million (1.3%)
14. Thailand: $265.3 million (1.1%)
15. Italy: $241.2 million (1%)

- Exempted from Donald Trump's 10% tariff imposed on other aluminum providers, Canada and Mexico represent 40.6% of US aluminum imports.

  The other 13 aluminum suppliers are subject to the US aluminum duty. Perhaps ominously, five among these countries are also among the top 15 customers for America's exports namely China, Japan, Germany, France and India.