



SECTION 232 STEEL/ALUMINUM MEASURES AND THE RESPONSES THEY ARE TRIGGERING

-- PANEL INTRODUCTION --

**Before a Global Business Dialogue
Colloquium on
“Section 232 Measures: What’s in a Name?”**

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-- SPEAKING NOTES --

Thanks once again to Judge Morris for assembling this panel and inviting me to kick it off.

At a time of great ferment in the world of trade, the US tariffs imposed in the name of national security, and the responsive actions of other governments, are probably the biggest source of concern and uncertainty. That is no small claim, given that (1) at this moment NAFTA is opened up on the operating table, (2) the WTO's dispute settlement mechanism is visibly swooning, and (3) some number of hundreds of billions of dollars of annual trade appear to be in harm's way in connection with the China 301 proceeding.

Quite a lot is at stake, both immediately and also systemically, in the Section 232/national security cases.

There are of course provisions in the GATT and GATS recognizing the retained right of each WTO Member to take "any action which it considers necessary for the protection of its essential security interests ... in time of war or other emergency in international relations." Tariffs to adjust imports under Section 232 are not the only, or even the main, category of U.S. measures that might have to rely on these security exceptions in GATT XXI and GATS XIV *bis* for legal cover. But Section 232 tariffs are the measure *du jour*, and presently are on track to give rise to the first really substantive exploration, in WTO dispute settlement, of what Art. XXI does and doesn't protect and whether it is or isn't self-judging.

Meanwhile, and prior to any litigation, restrictions are begetting restrictions. A considerable value of global goods trade is now facing extra tariffs or targeted for extra tariffs. It started with steel and aluminum; has spread to motorcycles, agricultural commodities, blue jeans and beverage alcohol; and seems set to sprawl later this year to include automotive goods and – once the retaliatory response to new U.S. auto tariffs kicks in – God knows what else.

So it's a fine mess, ripe for commentary by our expert panelists:

RUFUS YERXA is President of the National Foreign Trade Council. He has previously served at the highest levels of the U.S. government (Deputy USTR) and of the WTO Secretariat (Deputy D-G for more than a decade). A line in his bio states that he "has more than three decades of experience as a lawyer, diplomat, U.S. trade negotiator and international official." The achievements and public service underlying that short summary would take a long time to describe, and his

fingerprints are everywhere ... though not, if I have done the math correctly, on the 1962 Act itself. However, the statutory part of the US trade regime did get a rather thorough scrub during Rufus' period of US government service, during the 80s and 90s, with Section 232 remaining untouched. It was not left alone through inadvertence.

NICK GIORDANO is Vice President and Counsel for International Affairs at the National Pork Producers Council. Beyond what he does for the pork industry, he has attained the status of one of the elite business advocates on trade policy. He has taken a leadership role in working for congressional passage and implementation of every major trade agreement the past 10 years, and he chairs various food and agriculture trade coalitions.

JENNIFER HILLMAN's main current affiliation is Georgetown University Law Center and its Institute for International Economic Law, but along the way she has held most of the other interesting trade jobs a person can hold. Included are stints as USTR General Counsel, as Senate-confirmed Chief Textile Negotiator and USITC Commissioner, and a term as a member of the WTO Appellate Body. I've seen her work in private practice from close range and can attest that her skills extend way beyond public service.

SCOTT PAUL is President of the Alliance for American Manufacturing, an advocacy group established in 2007 by company and labor interests in the manufacturing sector. He has also been part of the White House Manufacturing Jobs Initiative and hosts the "Manufacturing Report" podcast which I commend to your attention if you are not already a listener.

GATS Art. XIV *bis*

1. Nothing in this Agreement shall be construed:

(a) to require any Member to furnish any information, the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any Member from taking any action which it considers necessary for the protection of its essential security interests:

(i) relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;

(ii) relating to fissionable and fusionable materials or the materials from which they are derived;

(iii) taken in time of war or other emergency in international relations; or

(c) to prevent any Member from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. The Council for Trade in Services shall be informed to the fullest extent possible of measures taken under paragraphs 1(b) and (c) and of their termination.

GATT 1947 Art XXI

Nothing in this Agreement shall be construed

(a) to require any contracting party to furnish any information the disclosure of which it considers contrary to its essential security interests; or

(b) to prevent any contracting party 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, ammunition 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 contracting party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.