

## "Critical Minerals" may herald Section 232 investigations



The Department of the Interior's (DOI) "critical minerals" list could provide insight into the Trump Administration's future national security and trade investigations under the Trade and Expansion Act of 1962. Already the Trump Administration has imposed tariffs targeting steel and aluminum, and the designation of certain critical minerals may indicate additional material commodities in the administration's crosshairs.

Section 232 of the Trade Expansion Act of 1962 allows the U.S. Department of Commerce (DOC) to investigate whether imports of certain articles threaten national security. If the investigation concludes that such imports pose potential harm to national security, the President may act to ameliorate the threat, including imposing tariffs or providing subsidies for the article at issue.

The critical minerals list was published in response to Executive Order 13817, signed on 20 December 2017. Spurred by a United States Geological Survey report titled, "Critical mineral resources of the United States—Economic and environmental geology and prospects for future supply," President Trump directed the Secretary of the Interior to examine U.S. dependency on the supply of important mineral resources. The order directed the Secretary to designate minerals which are: "(i) a non-fuel mineral or mineral material essential to the economic and national security of the United States, (ii) the supply chain of which is vulnerable to disruption, and (iii) that serves an essential function in the manufacturing of a product, the absence of which would have significant consequences for our economy or our national security." A draft list of critical minerals was published by the Secretary of the Interior on 16 February 2018. Following a public comment period, the final list of 35 critical minerals was approved on 18 May 2018. The 35 designated critical minerals include platinum group metals, rare earth elements, titanium and titanium alloys, and uranium.

For more information on critical minerals and their effect on the mining industry, *see* Korey Christensen's article, "Trump administration: 'Critical Minerals' could spur U.S. mining activity."

A key factor in determining whether a mineral received "critical" designation was the degree of U.S. import reliance. Certain other minerals important to U.S. infrastructure and the economy were not considered critical because the requirements for such minerals were met through domestic production. China is the leading global producer of a majority of the designated critical minerals (19 of 35) and a leading U.S. supplier for over one-third (13 of 35). According to industry publications (relying on sources within the Trump Administration), the critical minerals list was specifically crafted to target trade from foreign competitors such as China and Russia.

Critical minerals and Section 232 investigations already share a "national security" nexus, and the administration's consideration of import reliance when determining critical minerals demonstrates a close connection between critical minerals and targeted articles under Section 232. In fact, there have recently been calls for a Section 232 addressing rare earths.

The Trump Administration has already shown an inclination to exercise broad (and frequent) authority under Section 232. Though investigations under Section 232 generally focused on threats to national defense, the recent aluminum and steel investigations revealed that the DOC is taking a broad view of national security, including consideration of the "general security and welfare of certain industries beyond those necessary to satisfy national defense requirements." The DOC is also seeking additional funding for specialized Section 232 investigation teams and is currently considering a Section 232 investigation into uranium imports (a listed critical mineral).

Clients should closely monitor and examine the DOI's list of designated critical minerals. The Trump administration appears keen to exercise its powers under Section 232, and critical designation may provide an early indication of coming scrutiny.

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