

# Backgrounder: U.S. Steel Nail Industry on the Brink

## Future Depends on Restoration of Sect. 232 Tariffs for Nails

July 2021

### Executive Summary

The U.S. steel nail industry faces a crisis caused by a flood of imports resulting from the circumvention of tariffs imposed on imported steel adopted three years ago. The industry's future is now in doubt, with thousands of jobs at stake.

The 2018 tariffs, adopted to protect national security under Section 232 of the Trade Expansion Act of 1962 (Section 232), placed 25% duties on raw steel but not on finished products such as nails.

Foreign companies have exploited this loophole to make nails at lower cost than U.S. firms, and imported products are overwhelming domestic competitors, which now represent a small and dwindling portion of nails made in this country.

A proclamation issued by President Trump in 2020 attempted to address the circumvention, but it was challenged successfully in the Court of International Trade (CIT). That decision is on appeal, and the Justice Department has a deadline of Sept. 15 to file its brief. The American Steel Nail Coalition, representing all U.S. producers, will join as an *amicus*, filing a brief by Sept. 22 to support the U.S. Government's effort to overturn the CIT's decision, and re-impose 25% tariffs on nails, as well as other derivative products, to equalize the duty on raw steel and derivative products.

In a separate case on July 13, a Federal Appeals Court reversed the CIT and ruled that the President had the authority to increase Section 232 national security tariffs, at least in some cases, months after they were first implemented. That decision may provide support for the Government's position in the nails case.

The U.S. nails industry crisis provides an opportunity for the Biden Administration to make good on its "Build Back Better" strategy, which puts strong emphasis on domestic manufacturing. An entire American industry with a history dating to the 19<sup>th</sup> century could be wiped out if the current imbalance continues.

### Timetable

- On March 8, 2018, the U.S. Government imposed 25% tariffs on imports of steel and aluminum products. The duties were rendered to protect national security, under authority granted by Section 232 of the Trade Expansion Act of 1962. The Section 232 tariffs applied to basic steel products, not finished goods such as nails.

- The price of basic steel in the U.S. rose 20% to 25% because of the duties, but foreign manufacturers of nails were able to use steel sourced abroad and not subject to the tariffs. These nail producers then exported nails to the U.S., where domestic nail producers had to use more expensive steel in the manufacturing process. (The cost of steel represents roughly 70% of the cost of finished nails.)
- Imported nails, which dominated the U.S. market even before Section 232, were given a major advantage. If American producers tried to pass on higher costs, they lost business to cheaper imports. U.S. companies were forced to reduce employment.
- Foreign steel companies also realized that, by producing finished products at home and then sending them to the U.S., they could sell their steel in different form and evade onerous Section 232 tariffs. These producers naturally shifted resources to produce more nails and other products not covered by the tariffs.
- By 2019, the U.S. Government recognized that this behavior was clearly a form of circumvention, undercutting the national security goals of the original Section 232 tariffs.
- In response, President Trump on Jan. 24, 2020, issued Proclamation 9980, which expanded the Section 232 tariffs to cover “derivatives” of steel (and aluminum), that is, finished products like steel nails. In order to broaden Section 232, the Government had to meet specific criteria, showing that the new additions, such as nails, were undermining the national security goals of the original duties.
- The duties imposed by Proclamation 9980 briefly provided critical relief to American manufacturers of finished steel products, allowing companies to hire more workers. But the Proclamation was soon challenged by PrimeSource Building Products, a large global distributor of building products, and by others.
- A temporary injunction was issued to bar collection of tariffs on finished steel goods, and on April 5, 2021, the U.S. Court of International Trade (CIT) ruled that the Proclamation was void because it came too late and required an independent basis, rather than being an extension of the original Section 232 proclamation in 2018.
- The Biden Administration’s Justice Department appealed the decision to the U.S. Court of Appeals for the Federal Circuit, which has asked for briefs by Sept. 15 from principals and Sept. 22 from amicus parties, including the American Steel Nail Coalition.
- On July 13, in a separate case involving U.S. rebar fabricator Transpacific Steel and several Turkish steel producers, a Federal Court of Appeals panel ruled valid President Trump’s decision to double tariffs on Turkish steel several months after the original Section 232 duties took effect. That decision may bode well for the Government’s case defending the broadening of the original Section 232 steel tariffs to cover steel nails and other finished products. But the outcome of the Government’s appeal is uncertain because of several differences in the two cases.

### **Looking Ahead**

The April decision by the CIT has placed the U.S. steel nails industry in a dire position. Imported nails represent more than 80% of U.S. consumption, and Proclamation 9980 was

meant to constrain the immense volume of circumvention, which threatens to destroy the few U.S. steel nail producers that are left. Production of raw steel and finished steel products are closely linked, and the industry is critical to U.S. national security.

Currently, the 25% duty on imported steel nails is not being collected, and imports are rising. The only hope for ending this crisis soon is a favorable decision by the Court of Appeals overturning the CIT's invalidation of Proclamation 9980.

Unfair trade is endemic in the nails sector, and members of the U.S. Steel Nail Coalition have actively fought it by filing and winning numerous trade cases. The 2018 tariffs put the nails sector in a perilous position as foreign nails companies circumvented the duties. These foreign firms had found an unwitting partner in the U.S. Government through the original omission of finished goods from the Section 232 steel tariffs.

To its credit, the U.S. Government issued Proclamation 9980 to address the blatant circumvention that developed after the original 2018 Section 232 steel tariffs were in place. The Proclamation is a proper function of a government defending its national security interests after new information – in this case, circumvention – comes to light.

A Republican Administration issued Proclamation 9980, and a Democratic Administration has aggressively supported it in the courts.

The U.S. makes the finest steel nails in the world, but the U.S. market is dominated by foreign firms whose product is cheaper. Because of the original Section 232 steel tariffs anomaly, it is easier for the cheaper imports to penetrate the U.S. market as the input costs of some domestic producers have risen. To protect U.S. manufacturing employment and support American communities, upholding Proclamation 9980 is an absolute necessity.

The American Steel Nail Coalition is doing its best to protect U.S. producers and their workers, as well as our domestic manufacturing supply chain and overall national security interests, against foreign companies circumventing clear, lawful U.S. trade policy.

Backing the U.S. nails sector in its battle for fairness is a bipartisan policy. Both the original Section 232 tariffs and Proclamation 9980's extension of those tariffs to nails and other finished products were initiatives of the Trump Administration. They fit perfectly with President Biden's Build Back Better strategy to "Mobilize American manufacturing and innovation to ensure that the future is made in America, and in all of America."