

Recent Executive Actions Focus on Bulk-Power System Grid Security and Supply Chain

Key Notes:

- By executive order, the secretary of energy is now authorized to review and block any acquisition, importation, transfer or installation of any bulk-power system electric equipment in which a foreign country or foreign person has an interest.
- A list of prohibited suppliers of electric equipment may be forthcoming.
- In addition, a Section 232 investigation has been initiated into transformers and certain components, which may result in increased tariffs on these items.

Two recent federal government actions have highlighted national security concerns related to the nation's power grid. First, on May 1, 2020, President Donald Trump issued "[Executive Order on Securing the United States Bulk-Power System](#)." This executive order (EO) will likely lead to restrictions on the procurement and use of electric equipment from certain foreign adversaries for use in the U.S. power grid. Second, on May 4, 2020, Secretary of Commerce Wilbur Ross announced the initiation of a Section 232 investigation into whether certain transformer components used in electrical power grids are being imported in quantities that threaten national security.

Both of these actions demonstrate that the federal government is moving towards encouraging domestic production and prohibiting certain foreign sourcing of critical power grid components. Although this may lead to greater U.S. grid security, it may also lead to supply

disruptions and cost increases for current and future equipment installations.

Executive Order on Securing the United States Bulk-Power System

In the EO, the president found that "The unrestricted foreign supply of bulk-power system electric equipment constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, which has its source in whole or in substantial part outside the United States."

Although the United States continues to maintain a broad open investment policy, the EO states that "such openness must be balanced with the need to protect our Nation against a critical national security threat" from foreign adversaries. "Foreign adversaries" are broadly defined as any foreign government or person with a "long-term pattern or serious instances" of conduct adverse to the national security of the United States. While not specified by name, other executive orders, statutes and regulations regarding "foreign adversaries" have been targeted at companies based primarily in China and Russia. China, in particular, is a large producer of power grid components and likely to see the greatest impact of this action.

The EO authorizes the secretary of energy to review any acquisition, importation, transfer or installation of any bulk-power system electric equipment¹ (transaction) by any

¹ The term "bulk-power system electric equipment" is defined in the EO as items used in bulk-power system substations, control

rooms, or power generating stations, including reactors, capacitors, substation transformers, current coupling capacitors,

person, or with respect to any property, subject to the jurisdiction of the United States, where the transaction involves any property in which any foreign country or a foreign person has an interest. The secretary may prohibit the transaction or order mitigation measures if:

- the transaction involves bulk-power system electric equipment designed, developed, manufactured, or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and
- the transaction poses an undue risk of (i) sabotage or subversion; (ii) catastrophic effects on the security or resiliency of U.S. critical infrastructure or the U.S. economy; or (iii) otherwise poses an unacceptable risk to national security.

The EO states that the secretary of energy may establish criteria for identifying equipment and vendors in the bulk-power system electric equipment market as pre-qualified for future transactions. The secretary may publish a list of pre-approved vendors and may also prohibit procurement from certain sources.

Within 150 days (by September 28, 2020), the secretary must publish regulations to implement the measures set forth in the EO. In doing so, considerable leeway is provided to the secretary to identify countries or persons as “foreign adversaries” (as the term is defined in the EO), identify particular equipment for scrutiny, establish licensing procedures for otherwise prohibited transactions and prepare a mitigation agreement negotiation procedure.

The EO also directs the secretary to develop recommendations on ways to identify, isolate, monitor or replace items that pose risks as soon as practicable, taking into consideration the overall risk to the bulk-power system. It further establishes a task force to propose changes to the federal procurement process to make energy infrastructure procurement policies and procedures consistent with national security and make other policy

large generators, backup generators, substation voltage regulators, shunt capacitor equipment, automatic circuit reclosers, instrument transformers, coupling capacity voltage transformers, protective relaying, metering equipment, high voltage circuit breakers, generation turbines, industrial control systems,

recommendations as to these issues, including energy security and cybersecurity policymaking.

Section 232 Investigation Into Imports of Laminations and Wound Cores for Incorporation Into Transformers, Electrical Transformers and Transformer Regulators

Secretary of Commerce Ross contemporaneously announced a new Section 232 investigation into “whether laminations for stacked cores for incorporation into transformers, stacked and wound cores for incorporation into transformers, electrical transformers, and transformer regulators are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.” This is the sixth investigation the Trump administration has initiated pursuant to Section 232 of the Trade Expansion Act of 1962 to determine the effect of imports on U.S. national security. Prior to the Trump administration, the last Section 232 investigation occurred in 2001.

The national security concerns underlying this most recently initiated investigation are that: (1) transformers are part of the U.S. energy infrastructure; (2) laminations and cores made of grain-oriented electrical steel are critical transformer components; and (3) electrical steel is necessary for power distribution transformers for all types of energy (solar, nuclear, wind, coal and natural gas).

A Section 232 investigation need not focus on any “bad action” by foreign producers, although this may be a factor in the review. Rather, a Section 232 investigation focuses on:

- domestic production needed for projected national defense requirements;
- domestic industry’s capacity to meet those requirements;

distributed control systems, and safety instrumented systems. Items that are not included in the preceding list and that have broader application of use beyond the bulk-power system are outside the scope of this EO.

- related human and material resources;
- the importation of goods in terms of their quantities and use; and
- the close relation of national economic welfare to U.S. national security.²

The report will focus in large part on whether dependency on these imports makes the United States vulnerable if foreign supply is cut off.

Other recent Section 232 investigations have been conducted on steel and aluminum, resulting in significant tariffs imposed on those goods. The results of this investigation may similarly lead to increased tariffs on these foreign-made items.

Companies that operate parts of the bulk-power system and companies that supply equipment to this system should prepare for the disruption that may result from these two actions. Please contact our team to discuss ways we might help your company comment on and address the forthcoming regulations and Section 232 investigation or otherwise prepare for the potential impact to your supply chain.

FOR MORE INFORMATION

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² [Department of Commerce, "Frequently Asked Questions: Section 232 Investigations: The Effect of Steel Imports on the National Security"](#)