



Decision

Matter of: U.S. Department of Commerce—Applicability of the Congressional Review Act to the Section 232 Report on the Effects of Copper Imports on the National Security of the United States

File: B-338091

Date: June 4, 2026

DIGEST

In June 2025, the U.S. Department of Commerce submitted a report to the President on the national security effects of copper imports under section 232 of the Trade Expansion Act of 1962 (Report). The Report concluded that the quantities and circumstances of copper imports threatened to impair the national security as provided in section 232 and made recommendations to the President regarding the adjustment of copper imports.

The Congressional Review Act (CRA) requires that before a rule can take effect, an agency must submit the rule to both the House of Representatives and the Senate, as well as the Comptroller General. CRA adopts the definition of a rule under the Administrative Procedure Act (APA) but excludes certain categories of rules from coverage. We conclude the Report is not a rule for purposes of CRA because it does not meet the APA definition of rule.

DECISION

In June 2025, the U.S. Department of Commerce (Commerce) submitted a report to the President on the national security effects of copper imports under section 232 of the Trade Expansion Act of 1962 (Report).¹ We received a request for a decision as

¹ Proclamation 10962 of July 30, 2025, *Adjusting Imports of Copper Into the United States*, 90 Fed. Reg. 37727 (Aug. 5, 2025) (Proclamation); see 19 U.S.C. § 1862(b).

to whether the Report is a rule for purposes of the Congressional Review Act (CRA).²

Our practice when issuing decisions is to obtain the legal views of the relevant agency on the subject of the request.³ Accordingly, we reached out to Commerce to obtain the agency's views.⁴ We received Commerce's response on April 17, 2026.⁵

BACKGROUND

Section 232 of the Trade Expansion Act of 1962 outlines the procedures for the Secretary of Commerce (Secretary) to investigate the national security effects of importing "articles" such as copper.⁶ Within 270 days of commencing an investigation, the Secretary must submit a report to the President containing findings and recommendations.⁷ If the Secretary finds that importing an article threatens national security, the President must determine within 90 days of receiving the report whether he agrees with that finding and, if so, he must determine the necessary action to "adjust" imports of the article.⁸ The President must implement the action within 15 days of determining he will take action.⁹

² Letter from Senator Tim Kaine and Senator Ron Wyden to Acting Comptroller General (Feb. 6, 2026) (Request Letter).

³ GAO, *GAO's Protocols for Legal Decisions and Opinions*, GAO-24-107329 (Washington, D.C.: Feb. 2024), available at <https://www.gao.gov/products/gao-24-107329>.

⁴ Letter from Managing Associate General Counsel for Appropriations Law, GAO, to General Counsel, Commerce (Feb. 18, 2026).

⁵ Letter from General Counsel, Commerce, to Managing Associate General Counsel for Appropriations Law, GAO (Apr. 17, 2026) (Response Letter).

⁶ See Pub. L. No. 87-794, § 232, 76 Stat. 872, 877 (Oct. 11, 1962); 19 U.S.C. § 1862(b).

⁷ 19 U.S.C. § 1862(b)(3)(A); 15 C.F.R. § 705.10(b).

⁸ 19 U.S.C. § 1862(c)(1)(A); 15 C.F.R. § 705.11(a)(1). See Response Letter, at 2.

⁹ 19 U.S.C. § 1862(c)(1)(B); Response Letter, at 2.

In February 2025, the President issued an executive order directing the Secretary to investigate the national security impact of copper imports.¹⁰ The order stated the administration’s policy that copper is essential to U.S. national security, economic strength, and industrial resilience, but the nation’s increasing dependence on foreign sources and the risk of foreign market manipulation necessitated determining whether copper imports threaten to impair national security.¹¹ The Secretary initiated the investigation in March 2025.¹²

In June 2025, the Secretary submitted the Report to the President.¹³ The Report concluded that the present quantities and circumstances of copper imports threatened to impair U.S. national security.¹⁴ More specifically, the Report found that the quantities of copper imports and global excess capacity for producing copper were weakening the U.S. economy, “resulting in the persistent threat of further closures of domestic copper production facilities and the shrinking of our ability to meet national security production requirements.”¹⁵ Additional findings included that copper was essential to the nation’s manufacturing foundation; U.S. copper production had plummeted; and U.S. dependence on foreign sources of copper was a national security vulnerability.¹⁶

The Report recommended several actions to adjust copper imports. They included an immediate universal 30 percent import duty on semi-finished copper products and intensive copper derivative products; a phased universal tariff on refined copper in

¹⁰ Exec. Order No. 14220, *Addressing the Threat to National Security From Imports of Copper*, 90 Fed. Reg. 11001, § 2 (Feb. 28, 2025).

¹¹ *Id.* § 1.

¹² Response Letter, at 3.

¹³ Proclamation, at 37727; Response Letter, at 3. Commerce did not provide us with a copy of the Report, asserting that section 232 establishes the exclusive process for disclosure to Congress, and also citing executive privilege. Response Letter, at 1, 8–12. Commerce also has not published the Report in the *Federal Register* as required by law, 19 U.S.C. § 1862(b)(3)(B), but advised it will do so following the conclusion of presidential action. Response Letter, at 12. Commerce did provide specific information contained in the Report and we also relied upon the summary of the Report provided in the Proclamation, which is sufficiently detailed for our analysis under the CRA.

¹⁴ Proclamation, at 37727.

¹⁵ *Id.*

¹⁶ *Id.* at 37727–28.

2027 and 2028; and a domestic sales requirement of 25 percent for high-quality copper scrap, among other things.¹⁷

In July 2025, the President issued the Proclamation.¹⁸ It stated the President concurred with the Report's finding that copper imports threatened to impair U.S. national security and, consequently, the President had determined it was necessary to impose tariffs on copper imports.¹⁹ The Proclamation, among other things, imposed a general 50 percent tariff on all imports of semi-finished copper products and intensive copper derivative products, effective August 1, 2025.²⁰ Additionally, the Proclamation directed the Secretary to provide the President with an update on domestic copper markets by June 30, 2026, so the President can determine whether imposing phased universal import tariffs on imported copper is warranted.²¹

Congressional Review Act

CRA, enacted in 1996 to strengthen congressional oversight of agency rulemaking, requires federal agencies to submit a report on each new rule to both houses of Congress and the Comptroller General for review before the rule can take effect.²² The report must contain a copy of the rule, "a concise general statement relating to the rule," and the rule's proposed effective date.²³ CRA allows Congress to review and disapprove rules issued by federal agencies for a period of 60 days using special procedures.²⁴ If a resolution of disapproval is enacted, then the new rule has no force or effect.²⁵

CRA adopts the definition of rule under the Administrative Procedure Act (APA), which states that a rule is "the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe

¹⁷ *Id.* at 37728.

¹⁸ *Id.* at 37727.

¹⁹ *Id.* at 37728.

²⁰ *Id.* at 37729.

²¹ *Id.* at 37730; Response Letter, at 3–4.

²² 5 U.S.C. § 801(a)(1)(A).

²³ *Id.*

²⁴ *Id.* § 802.

²⁵ *Id.* § 801(b)(1).

law or policy or describing the organization, procedure, or practice requirements of an agency.”²⁶ However, CRA excludes three categories of rules from coverage: (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties.²⁷

Commerce did not submit a CRA report to Congress or the Comptroller General on the Report.²⁸ In its response to us, Commerce stated that the Report is not a rule subject to CRA because it is neither a final agency action nor a statement of general or particular applicability or future effect that implements, interprets, or prescribes law or policy.²⁹ Commerce also contends that disclosure under CRA does not apply because the underlying statute prescribes the exclusive process for disclosing the Report to Congress.³⁰

DISCUSSION

At issue here is whether the Report meets CRA’s definition of a rule, which adopts APA’s definition of a rule, with three exceptions. As explained below, we conclude that it does not. Because the Report does not meet the APA definition of rule, we need not address whether any CRA exceptions apply.

Applying APA’s definition of rule, the Report meets some but not all of the required elements. First, the Report is an agency statement. It is an official document by the head of the Department of Commerce, a federal agency, that must be published in the *Federal Register*.³¹

Second, the Report is of future effect as it recommends prospective actions for the President to take regarding copper imports. The Report proposes imposing an

²⁶ *Id.* §§ 551(4), 804(3).

²⁷ *Id.* § 804(3).

²⁸ Response Letter, at 12.

²⁹ *Id.*, at 1, 4–8.

³⁰ *Id.*, at 8–10.

³¹ See B-335115, Sept. 26, 2023 (healthcare memoranda were agency statements where they were published on agency letterhead and signed by a senior agency leader); 19 U.S.C. § 1862(b)(3)(B) (“Any portion of the report submitted by the Secretary . . . which does not contain classified information or proprietary information shall be published in the *Federal Register*.”).

immediate universal import duty on certain copper products and a phased universal tariff on refined copper in 2027 and 2028, among other things.³²

However, the Report does not meet the third element of APA's definition of rule because it does not implement, interpret, or prescribe law or policy, nor does it describe the organization, procedure, or practice requirements of an agency. An agency action implements, interprets, or prescribes law or policy when the action prescribes new regulations, changes regulatory requirements or official policy, or alters how the agency will exercise its discretion, among other things.³³

For example, where a notice issued by the District of Columbia's Pretrial Services Agency (PSA) "left the world as it found it" before its issuance, we concluded it did not implement, interpret, or prescribe law or policy.³⁴ Specifically, PSA's notice explained that as required by the Privacy Act of 1974, it would establish a system to manage certain employee records it would collect in accordance with an executive order.³⁵ The notice did not make or change policy—the policy had been previously set in the executive order and implementing guidance—and therefore we concluded PSA's notice did not implement, interpret, or prescribe law or policy.³⁶

We reached a similar conclusion in a decision concerning a Commerce memorandum regarding the decennial census.³⁷ We explained the memorandum was not a rule for CRA purposes because it was not designed to implement, interpret, or prescribe law or policy.³⁸ Rather, the memorandum explained the Secretary's rationale for a previous decision to include a census question and was

³² Proclamation, at 37728. See B-335629, July 8, 2024, n. 7 (agency document had future effect because it announced prospective recommendations concerning the conduct of oil and gas operators).

³³ B-337673, Jan. 16, 2026.

³⁴ See B-334005, Jan. 18, 2023 (*quoting Independent Equipment Dealers Association v. Environmental Protection Agency*, 372 F.3d 420, 428 (D.C. Cir. 2004) (letter by the Environmental Protection Agency "tread no new ground" and "left the world just as it found it, and thus cannot be fairly described as implementing, interpreting, or prescribing law or policy").

³⁵ *Id.*; see 5 U.S.C. § 552a.

³⁶ B-334005, Jan. 18, 2023.

³⁷ B-330288, Feb. 7, 2019.

³⁸ *Id.*

issued in conjunction with a statutory process whereby the Secretary informs Congress about such questions.³⁹

In another decision, we examined a notice that Commerce's National Institute of Standards and Technology (NIST) published in the *Federal Register* (Draft Framework).⁴⁰ NIST was seeking public comment on the Draft Framework, which it planned to later incorporate into a final framework to be used by the agency.⁴¹ As a result, we noted that there were additional steps NIST had to take before finalizing the framework.⁴² Those steps included analyzing and incorporating comments, which could cause the final framework to deviate significantly from the draft version.⁴³ The Draft Framework itself also did not alter the rights or obligations of regulated parties. Instead, it represented an interim step which, in draft form, broke no new ground and left the world as it found it.⁴⁴ Therefore, the Draft Framework did not implement, interpret, or prescribe law and policy.⁴⁵

Here, the Report does not implement, interpret, or prescribe law or policy. Like the PSA notice, the Report does not make or change policy. The administration's policy toward copper was set forth in the executive order directing the investigation into copper imports and in the Proclamation taking trade action in response to the Report.⁴⁶ And like the census memorandum, the Report was issued in conjunction with a statutory process that here required Commerce to share certain information.⁴⁷

³⁹ *Id.*

⁴⁰ B-336146, May 28, 2024.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 90 Fed. Reg. at 11001; Proclamation, at 37727–30.

⁴⁷ *Cf. Dalton v. Specter*, 511 U.S. 462, 464–66, 476 (1994) (holding actions under a statutory process requiring the Secretary of Defense to provide military base closure recommendations to a commission, which submits a report to the President for decision, were not reviewable under APA); *Franklin v. Massachusetts*, 505 U.S. 788, 792, 796, 801 (1992) (rejecting APA claims relating to a statutory scheme requiring the Secretary to take a decennial census and submit a report to the President, who must transmit a statement to Congress).

Rather than aiming to implement, interpret, or prescribe law or policy, the Report had an informational purpose: presenting findings and recommendations to the President.

Additionally, like the NIST Draft Framework, the Report is an interim step that itself does not implement, interpret, or prescribe law or policy. The Report merely outlined findings and proposed actions for the President to evaluate as final decisionmaker. The President could have rejected the Report's findings in whole or in part, taken no action, or taken actions deviating significantly from the recommendations, among other steps.⁴⁸ And this latitude is evident given the President's ultimate imposition of a 50 percent tariff on copper imports, rather than the recommended 30 percent.⁴⁹ Thus, the President had broad, independent discretion to decide which, if any, of the Report's recommendations he would sanction and implement.⁵⁰

Rather than instituting tariffs or similar trade actions, the Report merely presented findings and recommendations for presidential consideration.⁵¹ None of the Report's recommendations are self-executing or have any legal force.⁵² And the President alone determines whether to implement a recommendation—a final, discretionary action that could regulate trade and thereby alter rights and obligations.⁵³ Thus, the Report represents an interim step which itself breaks no new ground and leaves the world as it found it. For the reasons described above, the Report does not implement, interpret, or prescribe law and policy.

⁴⁸ See Response Letter, at 2.

⁴⁹ See Proclamation, at 37728–29.

⁵⁰ See Response Letter, at 2, 5, 7. *Cf. Dalton*, 511 U.S. at 469–70 (Secretary of Defense's report recommending base closures was not a final agency action where the report carried no direct consequences for base closings and the President would take the final action directly affecting the bases); *Franklin*, 505 U.S. at 798–99 (Secretary's census report to the President was not final because the report, *inter alia*, was "more like a tentative recommendation than a final and binding determination" and the President, not the Secretary, would take the final action affecting the states).

⁵¹ See *PrimeSource Building Products v. United States*, 497 F. Supp. 3d 1333, 1342 (Ct. Int'l Trade 2021) (Secretary's assessments in a section 232 report "did not themselves impose the tariffs on derivatives or implement any other measure" and thus did not implement, interpret, or prescribe law or policy under APA), *rev'd on other grounds*, 59 F.4th 1255 (Fed. Cir. 2023).

⁵² See Response Letter, at 7–8.

⁵³ See *id.*, at 1, 2, 8.

Further, the Report does not describe the organization, procedure, or practice requirements of an agency. Rules of this nature discuss the internal operations of an agency.⁵⁴ Here, the Report does not discuss Commerce's internal operations. As explained above, the Report outlines matters specific to copper imports for presidential consideration and possible action. Accordingly, the Report does not describe Commerce's organization, procedure, or practice requirements.

For the above reasons, the Report does not meet the APA definition of rule because it does not implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of an agency. Therefore, the Report is not a rule for purposes of CRA and is not subject to CRA's submission requirements. Because we determine that the Report is not a rule for purposes of CRA and is not subject to the submission requirements to Congress, we do not address Commerce's argument that Section 232 is the exclusive means of disclosure to Congress.

CONCLUSION

The Report does not meet the APA definition of a rule because it does not implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of an agency. Therefore, the Report is not a rule for purposes of CRA and is not subject to CRA's submission requirements.



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⁵⁴ B-334005, Jan. 18, 2023.