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Commerce Department Publishes Steel and Aluminum Tariff Exemptions Procedures

3.20.2018

The Commerce Department (DOC) published the actual procedure for “individuals and organizations using steel or aluminum articles in business activities in the United States” to seek product exemptions from the Section 232 tariffs on steel and aluminum imports announced by President Trump on March 8 2018. These product exemptions are separate from the country exemptions that the President has invited individual nations (other than Canada and Mexico) to attempt to negotiate. (Details of the product coverage and countries covered appeared in two earlier client alerts on March 6 and March 12)

Highlights of the DOC announcement on the product exemption process include:

1. The process is effective immediately. There is currently no deadline for submitting exemption requests. Approved exclusions will be effective five business days after the approval is posted and are not retroactive. Approved exclusions will generally be approved for only one year.
2. Only individuals or organizations using steel or aluminum articles identified in the Presidential Proclamations in business activities (e.g., construction, manufacturing, or supplying steel to users) in the United States may submit exclusion requests. We interpret this to apply to both the actual importers of the steel or aluminum and their users/ customers.
3. An exclusion will only be granted [1] if an article is not produced in the United States in a sufficient and reasonably available amount, [or] is not produced in the United States in a satisfactory quality; or [2] “for a specific national security consideration.” We can assist you in developing the rationale to support your claim.

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Catherine M. Karol
Of Counsel

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4. All product exemption requests (as well as any objections to such requests) must be submitted online, and will be made available to the public. No confidential information can be included in the submission; however, there is a process to notify the DOC that an applicant has proprietary or business confidential information relevant to the Department's consideration.
5. The Commerce Department will approve exclusions on a product basis that will be limited to the individual or organization that submitted the request. The DOC may enlarge it to include other companies, however.
6. Other companies can submit "follow-on" requests for the same product once it has been approved. Additionally, individuals and organizations can submit requests for exclusion of a product "where a previous exclusion for the same product has been denied or is no longer valid."
7. Any individual or organization in the United States may file objections to steel exclusion requests.
8. The DOC review period "normally" will not exceed 90 days, including adjudication of any objections submitted.

If you purchase or use any steel or aluminum products that may be affected by the tariffs, we are available to assist you in reviewing potential eligibility for exemption(s). We can also assist you with developing the product specific information required for the actual claim process (which is complex); and in monitoring the filing of, objections to, and determination of exclusion requests by others.

Catherine Karol

313.225.5308

karol@butzel.com

Les Glick

202.454.2839

glick@butzel.com