

# CLIENT ALERTS

---

## Court Of Appeals for Federal Circuit Upholds Constitutionality of Section 232 of the Trade Expansion Act of 1962 and the President's Authority to Impose Tariffs on Steel Pursuant to Section 232

3.2.2020

The hopes of many steel and aluminum importers of a judicial termination of President Trump's broad authority to impose tariffs were diminished on Friday, February 28, 2020, by the unanimous and strongly worded decision of the Court of Appeals of the Federal Circuit (CAFC) three-judge panel to uphold the constitutionality of section 232. The American Institute for International Steel (AIIS) and individual steel importers had made a broad-based challenge to the constitutionality of section 232 that was rejected in the Court of International Trade (CIT), and which they appealed to the CAFC.

Almost every basis for objection by the importers was rejected by the CAFC panel in their unanimous 18-page opinion. The Court methodically went through the history and provisions of section 232 and discussed the various standards and findings that are required by the Secretary of Commerce before the President can impose tariffs, such as the "impact of foreign competition on the economic welfare of individual domestic industries" *American Institute For Imported Steel et al. v United States, et al* case 19-1727, February 28, 2020, at 6. The Court pointed out the President based his action on a finding of the Secretary of Commerce that "steel is important to the 'national security'..." Id at 7.

The Court considered and rejected various arguments of the importers. It noted that AIIS did not allege that the President failed to adhere to the various statutory constraints but only stated a single claim "that section 232, on its face, is an unconstitutional delegation of legislative power to the President" Id at 11.

### Related People

Catherine M. Karol  
Of Counsel

### Related Services

International Business  
International Trade and  
Customs Specialty Team

## CLIENT ALERTS

---

This is in contrast to some other cases where importers challenged specific failures of the President to follow proper procedures and had success at preliminary stages at the CIT. see *Primesource Building Products v. U.S.* where a temporary restraining order was issued against Presidential action expanding the original scope of coverage of the duties, without additional notice and hearings. (See Butzel Client Alert February 19, 2020.)

The court specifically rejected the broad AIIIS claim of unconstitutionality based on a challenge to a prior Supreme Court precedent which upheld section 232 in *Federal Energy Commission v. Algonquin SNG Inc.* 426 U.S.548,552(1976). In *Algonquin* the Supreme Court upheld the constitutionality of section 232 in a case involving an increase in oil import license fees, rejecting similar arguments to those of the AIIIS that it was an unconstitutional delegation of Presidential authority. The Court rejected AIIIS attempts to distinguish the current case from *Algonquin*.

Reportedly AIIIS will seek review by the Supreme Court. In fact, it had sought a direct review of the CIT decision by the Supreme Court which was denied. See *Am Int'l Steel v United States et al.* Supreme Court Cert. Denied 18-1317 (April 15, 2019).

Historically few international trade cases are accepted for review at the Supreme Court. AIIIS has a difficult burden to convince the Supreme Court to review a decision upholding the constitutionality of section 232 when it has already ruled on this in a previous case, albeit 24 years ago. More likely to have a chance for success are specific challenges based on the failure of the President or the Commerce Department to follow required procedures.

**Butzel Long attorneys have counseled clients concerning Section 232 tariffs on steel and aluminum imports and have successfully assisted them with exclusion requests.**

**Leslie Alan Glick**

202.454.2839

glick@butzel.com

**Katherine Karol**

313.225.5308

karol@butzel.com

**Mitch Zajac**

313.225.7059

zajac@butzel.com

**Raul Rangel Miguel**

202.454.2841

rangel@butzel.com

## CLIENT ALERTS

---

**Bill Quan Yang**

313.225.7094

yang@butzel.com

**He Xian**

517.372.4449

xian@butzel.com