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Court Rejects Challenges to President's Section 232 Authority: Steel and Aluminum Tariffs Not Going Away Anytime Soon

2.8.2021

Last week, a three-judge panel of the Court of International Trade unanimously rejected the authority of former President Trump to impose tariffs on steel and aluminum under Section 232 of the Trade Expansion Act of 1962. Plaintiffs in *Universal Steel Products LLC, et.al v United States et al.* alleged that the Commerce Secretary's report and the President's Proclamations violated various procedural requirements of Section 232 and of the Administrative Procedure Act ("APA"). Specifically, Plaintiffs alleged that (1) the report issued by the Department of Commerce upon which the imposition of the tariffs is predicated is [a] a reviewable, final agency action, [b] is procedurally deficient, and [c] invalidates subsequent Presidential action; (2) both the Secretary and the President fundamentally misinterpreted the statute by failing to base their determinations on an "impending threat;" (3) the President violated "duration" language included in Section 232 by not including an end date at the outset; and (4) the tariffs imposed on Canada, Mexico, and EU member nations violated Section 232's timing provisions. The Court's 42-page decision granted the government's motion to dismiss the complaint, stating that the "claims fail on the pleadings".

Section 232 allows the imposition of tariffs or quotas when imports affect "national security". An investigation must be conducted by the Department of Commerce, which must consult with the Department of Defense and then make a recommendation to the President. Based upon the report provided to him by Commerce Secretary Wilbur Ross, President Trump made an affirmative finding and declared tariffs of 25% and 10% respectively, on certain steel and aluminum imports effective March 23, 2018. Australia, Argentina, Brazil, and South Korea were exempted from these duties from the beginning; and Canada and Mexico were exempted as part of the USMCA negotiations (although more recently Canada was included

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again for some products for a short period until they agreed to certain export restraints). (See Client Alerts from August 6, 2020, September 16, 2020)

The Department of Commerce established a process for companies to apply for exclusions for their products based on their non-availability in the United States. This process is still open to companies subject to these tariffs. The Department of Commerce issued an interim rule in December of 2020 revising the exclusion process in response to issues raised in rulemaking comments: more changes may be forthcoming after a further comment period closes this month. We will be addressing the revised exclusion process in a Client Alert shortly. Butzel Long attorneys have assisted many clients in applying for these exclusions.

The Biden administration has made clear that it will not immediately address any of the trade policies (including tariffs) put in place by the Trump Administration until they have been thoroughly reviewed. They have also been clear that their priority, for now, is the domestic agenda being driven by pandemic issues. Nonetheless, it is likely that these issues are already being carefully considered by the new appointees to Treasury, Commerce, and the USTR, and we can expect many new developments in the coming months.

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