

CLIENT ALERTS

STEEL AND ALUMINUM TARIFFS UPDATE: MORE COUNTRIES GIVEN 'TEMPORARY' EXEMPTIONS; BUTZEL TEAM IN PLACE AND WORKING ON CLIENT PRODUCT EXEMPTIONS

3.26.2018

Latest Developments

Hours before stiff tariffs on steel and aluminum (25% and 10% respectively) that were first announced by President Trump two weeks ago became effective, the White House on March 22, 2018 issued a new set of Proclamations temporarily exempting imports from "countries with important security relationships" with the U.S. – i.e., Argentina, Australia, Brazil, all European Union countries, and South Korea -- in order to continue discussions "on satisfactory alternative means to address the threatened impairment to the national security by imports of steel articles from those countries." Major exporters not included were Japan, China, India, and Turkey.

These latest Proclamations provide an expiration date of May 1, 2018, for these country exemptions, and also include Canada and Mexico, which were exempted in the March 15, 2018 Proclamations, in that expiration date. The Proclamations also discussed possible alternatives of quotas and/or varying tariff rates for individual countries in order to prevent transshipment of goods. [The South Korean Trade Ministry published a statement today announcing that it had reached an agreement with the U.S. granting it a "permanent" exemption from the tariffs in exchange for its promise to reduce its steel exports by approximately 30% and to lower trade barriers to autos imported from the U.S.]

Butzel Team Has Begun Processing Product Exclusion Requests

The Products Exclusion Request process announced by the Department of Commerce on March 19, 2018, remains in effect and may be even more important to U.S. steel and aluminum users. Our Client Alert of March 20, 2018 describes the DOC guidance on this lengthy process in greater detail.

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Since the latest DOC announcement, Butzel has assembled a team to help clients navigate the factual, legal, and administrative complexities of filing these requests, and that “Tariffs Team” now has a number of client submissions underway.

Important Considerations for Companies Contemplating Exemptions

- Trade Associations **cannot** submit on behalf of their members
 - Each individual company must submit its own requests for product exclusions.
 - Approvals of exemption for a particular product apply only to the submitter (but others may submit “follow-on” requests; and DOC **may** extend to others).
- Each individual company must submit a separate Exclusion Request for each steel or aluminum item. DOC is anticipating approximately 4-6 thousand Requests.
- Request must be made by completion of a DOC form:
 - Form contains approximately 30 questions
 - If all questions are not answered, the request will be rejected
 - MUST include 10-digit HTSUS number
 - Extensive factual data required for each part
- Request must demonstrate that the article for which exclusion from tariff is sought:
 - Is not produced in the U.S: 1) in sufficient quantity/ availability; OR 2) of a sufficient quality; or
 - Is/should be excluded for a specific national security consideration.

(We can assist you in documenting these criteria.)
- Key Dates
 - Tariffs effective 3/23/2018.
 - Country exemptions set to expire 5/1/2018.
 - Product Exclusion Requests can be filed immediately.
 - Objection to filed Product Exclusion Request must be filed within 30 days.
 - DOC “expects” their review of requests to take about 90 days “ordinarily”.
 - *****The date a Product Exclusion Request is posted for public comment:**

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Significantly, the latest Proclamations now make any exemptions granted retroactive to the date the Exclusion Request is posted for public comment (related to when Request is filed). So even though there is no administrative deadline for filing such a request, the potential cost benefits of filing quickly could be considerable. The sooner you file the sooner you may have retroactive exemptions.

Next Steps After Submitting Product Exemption Request

The DOC Product Exclusion Request Process imposes numerous monitoring requirements on applicants to track objections, other applications for similar products, and DOC determinations. Additionally, it is likely that the requirements may be amended as applications start arriving. Butzel is putting a comprehensive monitoring system in place to facilitate this part of the process.

Since it is not currently clear how any exemptions granted will be processed through the supply chain, we will be monitoring this issue closely both to advise our clients and to provide input to the DOC.

Please contact Kate, Les, or Mitch to discuss obtaining Product Exemptions for your steel or aluminum materials.

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