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Section 232 Steel and Aluminum Tariffs Update – May 4 2018

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EU, CANADA, MEXICO GRANTED A “FINAL” 30 DAY EXEMPTION TO “CONTINUE” NEGOTIATIONS; SEVERAL OTHER COUNTRIES GRANTED “PERMANENT” EXEMPTIONS IN EXCHANGE FOR QUOTAS. PRODUCT EXCLUSION REQUEST PROGRAM BOGGED DOWN.

New Proclamations Extending Exemptions for Some Countries Come Out Hours Before May 1 Deadline

Further prolonging the threat of a possible trade war, President Trump issued Proclamations on April 30, 2018, that temporarily extend the exemption from Section 232 steel and aluminum tariffs for Mexico, Canada, and the EU for another 30 days. The Proclamations also stated that the Administration has reached a final agreement with South Korea on steel imports, and “agreements in principle with Argentina. Australia and Brazil, the details of which will be finalized shortly”, granting temporary exemptions covering both steel and aluminum imports with no current expiration dates. (However, on May 2d, the Brazilian government contradicted the U.S. announcement of a deal between the two countries. The Brazil Foreign and Trade Ministries said the U.S. had unilaterally shut down talks after offering Brazil a choice between quotas or tariffs. The statement indicated that Brazil remains open to further discussions.)

Quotas for Everyone?

The White House announcement provided further confirmation for recent statements by various high-level Administration officials that negotiations with any country are dependent on further trade concessions: “In all of these negotiations, the Administration is focused on **quotas** [emphasis added] that will restrain imports, prevent transshipments, and protect the national security.” (For example, South Korea agreed to limit steel exports to 70 percent of average imports into the U.S. from 2015 through 2017. On May 3rd, the U.S. Customs and Border Patrol issued a statement on its website clarifying that [for South Korea,

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at least]: 1) quantities shipped to the U.S. in excess of the quotas will not be permitted entry (i.e., subject to tariffs); 2) that quotas will be administered and enforced on a quarterly basis; and 3) some quota categories are already filled/ closed)

Department of Commerce Secretary Wilbur Ross underscored in interviews on Monday and Tuesday that the White House had no intention of engaging in “protracted” extensions with Canada, Mexico, and the EU, describing the additional 30 days exemption granted to those countries as “extending negotiations” for a “final” 30 days. “If we are going to impose [tariffs], we’re are going to have to do it pretty soon, or else people will start gaming the system.” He also reinforced the requirement of quotas as a *quid pro quo* for tariffs exemption, stating that the White House objective is to reduce overall imports of the metals into the U.S., not just imports from China.

Similarly, Peter Navarro, Director of the White House Trade Council, stated in a speech to steel industry executives on May 1st: “The guiding principle of this Administration ... is that any country or entity such as the European Union that is exempt from the tariffs, will have a quota.” Argentina announced on May 2nd that it has agreed to limit its steel exports to 180,000 tons per year. (However, on May 2nd, Steve Ciobo, Australian Trade Minister, reiterated Australia’s understanding that its agreed-upon exemptions are both “permanent” and “unconditional”, i.e., no quotas.)

What remains unclear, from an examination of past practice and from conversation coming from the White House and the Department of Commerce, is how exactly quotas, which are actually voluntary export restrictions that (like tariffs) decrease the supply of goods and drive up prices, would be implemented by other countries. In addition to concerns about how those quotas would impact the global supply chain, downstream manufacturers and ultimately, consumers, there is also some question as to whether quotas are a violation of international trade agreements.

EU, Canada, Mexico Not Pleased by Threats

The EU criticized the one-month extension, maintaining that it should not have been subject to the tariffs from the beginning. It has argued that the global overcapacity that the U.S. is trying to address does not originate in the EU and that in fact, the EU has actively engaged with the U.S. to find solutions to the problem created by China.

Reasserting its position that “[w]e will not negotiate under threat”, an EU statement issued on May 01 suggested the group’s resolve against U.S. demand for a roughly 16% reduction of EU steel and aluminum exports to the U.S.:

“The U.S. decision prolongs market uncertainty, which is already affecting business decisions. The EU should be fully and permanently exempted from these measures, as they cannot be justified on the grounds of national security.”

Both French President Macron and German Chancellor Merkel visited Washington last week to lobby for EU exemption from the tariffs. President Trump is reported to be especially concerned about Germany’s large trade surplus with the U.S., an issue that Chancellor Merkel has previously been

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reluctant to discuss. The EU has already initiated a complaint to the World Trade Organization that the proposed tariffs violate existing international trade agreements as a predication to imposing retaliatory tariffs on approximately \$7B (USD) of American-made products.

Despite recent progress in the previously stalled NAFTA talks among the three nations, Canada and Mexico have similarly cautioned the U.S. against using the Section 232 tariffs deadline to drive those discussions. The Canadian ambassador to the U.S. David McNaughton stated: "We don't acknowledge there is any linkage to NAFTA." Mexico's economic minister also indicated that Mexico would respond to the implementation of the tariffs on Mexico with retaliatory tariffs.

Department of Commerce Product Exclusion Request Process Experiencing Problems

Meanwhile, the Product Exclusion Request Process implemented by the Department of Commerce on March 23rd is off to a rough start. As of April 27th, the Bureau of Industry and Security (BIS) unit that is handling those requests had posted less than 20% of the over 7,000 requests received. The BIS unit has added 13 new staffers to the 6 originally assigned, but the head of the unit, Mira Ricardel, left suddenly last week to join John Bolton's National Security team. Secretary Ross has asked Congress for additional funding for the process as requests continue to flood in.

As we have filed and tracked requests, it has become clear that the Department of Commerce review process is at least two-tiered: first, the staff is reviewing the online applications for completeness, and to ensure the appropriate type of data has been included. Then, they are looking at the exclusions requests to some degree on the merits, to ensure material properties meet some minimum level of accuracy before being published.

Senators Orrin Hatch (R-UT) and Ron Wyden (D-OR) recently wrote to Secretary Ross on behalf of the Senate Committee on Finance that they co-chair complaining about the lack of "basic due process and procedural fairness for stakeholders, especially American small businesses" and "appropriate mechanisms to prevent the Section 232 tariffs and product exclusion process from being abused for anticompetitive purposes." [The Hill] They expressed their concern that Commerce had bypassed certain clearance procedures, and that the amount of detail being requested and inability to consolidate information either by business or through trade associations forced both petitioners and objectors to choose between risking denial of their request because of inaccurate or incomplete information, and paying tariff charges for the intervening period needed to make a more thorough submission.

Some submitters have reported that it has taken them more than 2 full days to prepare a product request for one product. Other businesses have reported that they anticipate having to file as many as 2000 separate requests on behalf of their business (the Department of Commerce has confirmed that about one-third of the requests have come from 10 companies and that one company submitted close to 1100). Delays of more than 5 weeks between submission of a request and posting appear to be common (although Commerce has countered that the majority of requests have been received in the last two weeks), and no requests for exclusion have been granted to date, and almost as many (Commerce confirmed 933) have been rejected or returned for technicalities as have been posted.

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Butzel attorneys are following these developments closely, as they change by the hour. We have been in contact with many of our clients that work in various parts of the industry to understand the impact of both these tariffs and of implementation delays on their respective businesses. You can reach out to any of us for the most current developments. We can also advise and assist with product exclusion requests.

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