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President Trump Expands Section 232 Steel and Aluminum Tariffs to Cover Derivative Products As Well As Raw Metals Beginning February 8th

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U.S. steel and aluminum producers were the intended beneficiaries of the Section 232 tariffs initiated by President Trump in 2018. Steel imports in 2019 dropped 17% year-over-year providing an opportunity for U.S.- based steel manufacturers to improve their market share to above 80%.

Downstream supply chain manufacturers were less fortunate. Not only did the 25% tariffs make their steel imports more expensive, but they also allowed domestic steel producers to raise their prices significantly, whether businesses continued to import or switched to domestic.

The inflated pricing on raw steel and aluminum led to what Bloomberg's Terms of Trade described as a "perfectly rational decision" on the part of U.S. businesses:

"To avoid the tariffs and the higher costs of downstream products made with costlier American steel at home, companies are importing cheaper foreign-made products. Which is exactly what economists warned would happen when the tariffs were first put in place. Trade isn't static. It tends to flow around barriers as businesses adapt."

In a Proclamation issued on January 24, 2020, President Trump stated:

"Although imports of aluminum articles and steel articles have declined since the imposition of the tariffs and quotas, the Secretary has informed me that imports of certain derivatives of aluminum articles and imports of certain derivatives of steel articles have significantly increased since the imposition of the tariffs and quotas. The net effect of the increase of imports of these derivatives has been to erode the customer base for U.S. producers of aluminum and steel and undermine the purpose of

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the proclamations adjusting imports of aluminum and steel articles to remove the threatened impairment of the national security.”

The U.S. will, therefore, expand existing 25% tariffs on steel and 10% tariffs on aluminum to cover imports of several items made from the metals, including steel nails, tacks, staples wires, and cables, effective Feb. 8. The Proclamation states that this action is “necessary and appropriate in light of our national security interests”. However, the Proclamation exempts derivative aluminum articles from Argentina, Australia, Canada, and Mexico, and derivative steel articles from Argentina, Australia, Brazil, Canada, Mexico, and South Korea.

In addition, the Proclamation authorizes the Department of Commerce to establish a process for “directly affected parties located in the U.S.” to request exclusions from the latest tariffs (1) for any derivative article determined not to be produced in the U.S. in a sufficient and reasonably available amount or of a satisfactory quality, and (2) based on specific national security considerations. Exclusion requests may only be made by importers. Exclusions granted will apply as of the date the request was accepted by the DOC.

The products covered under the new announcement were enumerated by the Bureau of Industry and Standards of the Department of Commerce in a January 28th announcement:

nails, tacks (other than thumb tacks), drawing pins, corrugated nails, staples (other than those of HTSUS heading 8305) and similar articles, of iron or steel, whether or not with heads of other material (excluding such articles with heads of copper) that are (a) suitable for use in powder-actuated hand tools, threaded (described in subheading 7317.00.30) or (b) of one piece construction, whether or not made of round wire (described in HTSUS 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5560, 7317.00.5580 or 7317.00.6560 only and not in other statistical reporting numbers of subheadings 7317.00.55 and 7317.00.65

- bumper stampings of steel or aluminum, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in HTSUS 8708.10.30)

- body stampings of steel or aluminum, for tractors suitable for agricultural use (described in HTSUS 8708.29.21)

- stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and with steel core, not electrically insulated, fitted with fittings or made up into articles (described in HTSUS 7614.10.50)

stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated, that (a) comprise electrical conductors and are not fitted with fittings or made up into articles (described in HTSUS 7614.90.20), (b) do not comprise electrical conductors and are not fitted with fittings or made up into articles (described in HTSUS 7614.90.40), or (c) are fitted with fittings or made up into articles (described in HTSUS 7614.90.50)

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Derivative steel products will be covered by new HTSUS subheading 9903.80.03 and derivative aluminum products will be covered by new HTSUS subheading 9903.85.03.

The Section 232 tariffs currently apply to **(1) steel articles classified under HTSUS subheadings 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.10 through 7306.90, , and (2) the following aluminum articles: (a) unwrought aluminum (heading 7601); (b) aluminum bars, rods, and profiles (heading 7604); (c) aluminum wire (heading 7605); (d) aluminum plate, sheet, strip, and foil (flat rolled products) (headings 7606 and 7607); (e) aluminum tubes and pipes and tube and pipe fittings (headings 7608 and 7609); and (f) aluminum castings and forgings (HTSUS 7616.99.5160 and 7616.99.5170).**

Some trade experts have questioned whether a preliminary decision issued last year by the United States Court of International Trade interpreting the President's powers under Section 232 of the Trade Expansion Act of 1962, the legal provision it used to issue the tariffs, requires the president to act within certain periods that have already expired.

Butzel Long attorneys have been tracking these developments closely (see previous Client Alerts: June 7, 2019, and November 19, 2019). Butzel Long attorneys have counseled clients concerning Section 232 Tariffs and have successfully assisted them with exclusion requests and are available to assist them in understanding the latest changes.

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