

CLIENT ALERTS

Steel and Aluminum Tariffs Update: Court of International Trade Taking Action

2.19.2020

Whether or not one believes tariffs are the fix to a national security issue – the basis for Section 232 Tariffs – it is clear that tariffs are having an effect on the US economy (some say positively, others say negatively). The courts, at least the Court of International Trade, has been increasingly active in this area. The United States Court of International Trade recently granted a temporary restraining order (TRO) against the Trump Administration's recently proposed tariffs on derivative steel and aluminum products for the importer of steel and aluminum derivative products. While tariffs on derivative steel and aluminum imports began on February 8th for most companies, not so for PrimeSource Building Products.

PrimeSource Building Products is a Texas-based importer and distributor of building materials. The basis of PrimeSource's claim is that the Trump Administration went outside the bounds of Section 232, violated the Administrative Procedures Act by not allowing for a mandated public comment period, and further violated PrimeSource's due process rights. PrimeSource also asserted that Section 232 is an over-delegation of power by Congress to the President. Interestingly, the US Court of International Trade has already rejected similar arguments, as recently as last March, when the American Institute for International Steel contested the constitutionality of the Section 232 steel tariffs. (This matter was heard in U.S. Court of Appeals last month and the court is yet to issue its ruling.)

What happens if PrimeSource is successful in its claim? Could the success of PrimeSource benefit all importers of steel and aluminum derivative products? What about importers of other steel and aluminum products? These are just a few of the many questions that may soon require answers based on the outcome of PrimeSource's (and the American Institute for International Steel's) cases.

Related People

Catherine M. Karol
Of Counsel

Related Services

International Business

International Trade and
Customs Specialty Team

CLIENT ALERTS

The reality is, for a company to effectively prevent the required payment customs duties, some order such as PrimeSource's TRO is necessary. Despite the bond, PrimeSource had to post (which is typical in any TRO case), it is not required to pay duties during the pendency of its litigation in the Court of International Trade. While the litigation continues, companies who have not received TROs would not have the same benefit. Instead, even if the tariffs are found to be unenforceable, companies subject to the tariff would likely have to continue paying tariffs until litigation on the issue is complete – perhaps all the way up through the US Supreme Court. Notably, TROs are generally very hard to achieve, especially in instances where money is the root of the issue. In this specific case, the TRO was issued as a consent order – an order negotiated by the parties. Because the order did not make a finding on the likelihood of success of PrimeSource's claim, the status of the TRO may be affected by the ongoing litigation.

Butzel has found that many options for addressing tariffs in the courts, for addressing tariffs through the 301 and 232 processes and addressing tariffs in other, and for addressing tariffs in less publicized but more creative ways. If you or your company is struggling with tariffs, our Tariff Team is available to support.

In addition, Butzel will be collaborating with OESA on March 3, March 18, April 1, and April 15 for four live webinars to discuss the related topic of the United States Mexico Canada Agreement (USMCA), including addressing the impact of the USMCA, including discussion about regional value content, labor value content, and steel and aluminum content (among other topics). Contact your Butzel Long attorney for more information.

Mitch Zajac

313.225.7059

zajac@butzel.com

Catherine Karol

313.225.5308

karol@butzel.com

Leslie Alan Glick

202.454.2839

glick@butzel.com

Raul Rangel Miguel

202.454.2841

rangel@butzel.com

Bill Quan Yang

313.225.7094

yang@butzel.com

CLIENT ALERTS

He Xian

517.372.4449

xian@butzel.com