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The Rules of the Road Covering 232 Steel and Aluminum Tariff Exclusion Requests Are Changing

9.7.2018

Soon, avid readers of the Federal Register will see “updates” to the 232 Steel and Aluminum tariff exclusion process that the Department of Commerce says is based on feedback from public comment. There are changes in the proposed final rule, dubbed the “second interim final rule”, and the changes will clearly help future filers. But, for those 38,000 filed comments, the next question is, how are already-filed applications going to be treated under the new rules?

The rule, which is expected to be posted on September 11, 2018, is adding a rebuttal and sur-rebuttal process under paragraphs (f) and (g) of the two supplements and making a number of other changes which the Department of Commerce contends will make the criteria for granting exclusions more well defined and will make parties’ applications more transparent for the public.

Specific Key Changes

Addition of a Rebuttal Process – Paragraph (f) – and Addition of a Sur-rebuttal Process – Paragraph (g)

These processes are new as laid out in the second interim final rule. Beyond laying out the specific process, the addition includes the size limitations of rebuttals and sur-rebuttals as well as the time limit for submitting rebuttals after objections and sur-rebuttals after rebuttals are filed.

Addition of a Process for Streamlined, Unopposed Approvals – Paragraph (h)(2)(ii)

Many of the comments filed regarding the first interim final rule spoke to the inefficiency of the exclusion process, which this addition seeks to clarify. Under the Streamlined, Unopposed Approval addition, the Department of Commerce seeks to clarify how requests that are filed, receive no objections, and don’t

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implicate any national security threat will be approved with greater speed and efficiency.

Additional Changes Included in the Second Interim Final Rule

- Clarification for the public regarding the importance of not submitting non-public information on the exclusion request form, while further establishing a process for submitting confidential business information outside of the form
- Allowance of minimum and maximum dimensions according to a specified range
- Designation of process submitting an exclusion request for steel imported from a country with exemptions and quantity restrictions
- Further clarification of the objection process

With all of that, the question remains, how do these changes impact your business? If you've not yet filed an exclusion request, these changes are clarifying many of inefficiencies in the original process. Further, it allows exclusion requesters to combat broad objections that many companies are filing in order to protect their positions in the US Steel and Aluminum industry. The new rule also addresses opportunities to be "grandfathered" into the changes so long as specific requirements are met.

So, whether you are yet to file an exclusion, if you've filed an exclusion and are unsure how to protect your interest under this second interim proposed rule, or if you are just a tariff-junkie like us, reach out to your Butzel attorneys to stay on top the latest trade and tariff developments.

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