

CLIENT ALERTS

Trump Administration Extends Section 232 Steel and Aluminum Tariffs to Canada, Mexico, and EU; Are Product Exemptions the Last Resort for Imported Metals Users?

6.1.2018

The White House announced this morning that three of the United States' closest allies would no longer be exempted from the steel and aluminum tariffs imposed by President Trump in early March as a measure to protect national security. The U.S. will impose tariffs of 25% on steel imports and 10% on aluminum imports from Canada, Mexico and the European Union (which collectively account for almost 50% of U.S. imports of these products) beginning at midnight June 1. The Administration had granted a short-term exclusion until April 30th to these and other countries that was later extended one month to May 31st. U.S. negotiators did little to conceal the fact that these temporary exclusions were being used as leverage for other trade concessions, especially in NAFTA negotiations.

Despite caution from the Department of Defense that the Administration avoid "global" tariffs or quotas and reinforce to our "key allies" that any actions undertaken under the President's 232 authority "are focused on correcting Chinese overproduction and countering [Chinese] attempts to circumvent existing anti-dumping tariffs", Commerce Secretary Ross told reporters that there had been insufficient progress in discussions with Canada and Mexico on NAFTA, and on other trade-related matters with the EU, to warrant further exclusions.

All three entities registered their displeasure by announcing "proportionate" retaliatory tariffs, dismissing the U.S. positioning of the measures as national-security driven and addressing them instead as protectionist trade "safeguards" under World Trade Organization rules. The EU also announced that it would file a WTO challenge on June 1st.

Related People

Catherine M. Karol
Of Counsel

Related Services

International Business
International Trade and
Customs Specialty Team

CLIENT ALERTS

Secretary Ross defended the national security rationale, stating: “We take the view that without a strong economy, you can’t have strong national security.” The White House announcement said: ‘steel and aluminum tariffs have already had major, positive effects on steel and aluminum workers and jobs and will continue to do so long into the future.’”

Across the board higher steel and aluminum prices in the U.S. are anticipated from the tariffs. Additionally, some analysts expect anticipated retaliatory tariffs to adversely affect a wide swath of other U.S. export sectors, including agriculture, resulting in overall job loss. Secretary Ross said that the Trump administration, led by Agriculture Secretary Sonny Perdue, is seeking ways to assist farmers who may be hurt by retaliatory measures. China, Russia, and Turkey have also indicated their intent to impose retaliatory tariffs.

With the elimination of country exclusions for all countries except South Korea, Argentina, Australia, and Brazil, (and the corresponding imposition of quotas on those countries in exchange for the tariffs exclusions), U.S. purchasers of steel and aluminum imports are left with the sole option of filing for product exemptions. From the outset, Commerce Department officials signaled that they did not intend to grant many product exemptions, instead favoring U.S. companies adding production capacity. Since the Interim Final Rule that was announced on March 23rd reflecting that preference, roughly 10,000 exemption requests have been received by Commerce. To date, less than 7000 have been posted and none decided.

The product exemption process in place has been widely criticized, and a number of constituencies have proposed revisions, including most recently the American Petroleum Institute. In a letter to the Department of Commerce, that trade association requested changes to the Interim Final Rule setting out the exemption process to clarify the effective dates of any exemption granted and to set out the specific criteria the Department is using to determine whether a product is (or can be) produced in sufficient quantity and of sufficient quality in the U.S. “If the Department does not more clearly define the criteria under which it will grant exclusions in consideration of the issues identified above, US businesses may waste countless hours and other resources in preparing exclusion requests that may have been deemed proper but for the Department’s failure to articulate administrable guidelines. In addition, taxpayer resources will have been wasted in the Department’s consideration of such requests. The Associations also believe that any final agency decisions rendered with unclear or unarticulated criteria would be arbitrary, capricious, and subject to challenge in the Court of International Trade or other forum.”

We are guardedly optimistic that, in light of today’s developments and their substantial impact on steel and aluminum, the Commerce Department will find it necessary to make major improvements to the product exemption process. Our previous Client Alerts on these tariffs have discussed the possibility that many users would eventually find it necessary to seek product exclusions, and we are continuing to work with clients in that process. We will continue to monitor developments in this area closely and provide you with timely updates.

CLIENT ALERTS

Catherine Karol

313.225.5308

karol@butzel.com

Leslie Alan Glick

202.454.2839

glick@butzel.com

Mitchell Zajac

313.225.7059

zajac@butzel.com