

March 23, 2018

UNITED STATES IMPLEMENTS INCREASED TARIFFS ON STEEL AND ALUMINUM IMPORTS: EXCLUSION RELIEF POSSIBLE

To Our Clients and Friends:

Effective this morning, the United States implemented the increased tariffs on steel and aluminum imports that President Trump announced on March 8, 2018 in Presidential Proclamations implementing findings issued by the Commerce Department under Section 232 of the Trade Expansion Act of 1962, which allows the President to order a national security – focused investigation on the impacts of specified imports and, based upon the findings of the investigation, to impose tariffs without Congressional approval. The Commerce Department investigations into imports of steel and of aluminum were initiated in April 2017, and in January 2018, the Commerce Department issued its reports. The presidential proclamations issued on March 8, 2018 provided for increased duties of twenty-five percent on a range of steel articles (generally referenced in Chapters 72 and 73 of the Harmonized Tariff Schedule of the United States or "HTSUS") and ten percent on various aluminum articles (generally referenced in Chapter 76 of the HTSUS).

The March 8, 2018 Presidential Proclamations provided that the additional duties would not apply to imports of steel or aluminum articles from Canada and Mexico, although the preambles to the Proclamations indicated that the exemptions for products from Canada and Mexico were only effective "at least at this time," and that these exemptions would be affected by "ongoing discussions with these countries." The preambles to these Proclamations also stated that "[a]ny country with which we have a security relationship is welcome to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country," and that based on these discussions the President "may remove or modify" the tariffs from that country. The Presidential Proclamations also expressly provided for the possibility of "exclusions" from the increased tariffs pursuant to procedures to be issued by the Commerce Department, as discussed below.

Yesterday evening, President Trump issued new Presidential Proclamations with respect to the Section 232 increased steel and aluminum tariffs. These Proclamations modified the March 8, 2018 Presidential Proclamations in the following principal respects:

- The Proclamations provided for a temporary exemption from the increased tariffs until May 1, 2018 for Australia, Argentina, South Korea, Brazil, and the member countries of the European union.
- The Proclamations expressly stated that these exemptions as well as those for Canada and Mexico would apply only to steel articles imported through April 30, 2018.

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- The Proclamations further clarified that the "exclusion" relief provided for and discussed below would be "retroactive to the date the request for exclusion was posted for public comment."

Needless to say, these latest Presidential Proclamations will not be the end of the processes involved in these Section 232 increased tariffs. For example, other countries such as Japan will certainly be pressing for exemption from the increased tariffs, and the April 30, 2018 termination of the existing exemptions for imports from Canada, Mexico, Austria, Argentina, South Korea, Brazil and the member countries of the European union will certainly be the focus of efforts to extend these exemptions beyond this date.

As noted above, the March 8, 2018 Presidential Proclamations provided for the possibility of "exclusions" for certain steel articles. Earlier this week on March 19, 2018, the Commerce Department issued an "interim final rule" relating to the exclusion process, and also provided formats for the exclusion applications. These materials generally provided the following concerning the exclusion process:

- All exclusion requests (as well as all objections to such requests) must be filed electronically using the specified form.
- The forms require very extensive information concerning the products for which an exclusion is requested, providing that a "separate Exclusion Request must be submitted for each steel product by physical dimension," and requiring detailed information on "product availability" from United States steel manufacturers. Requests are limited to twenty five pages, inclusive of all exhibits and attachments, but not including the forms themselves.
- Only individuals and organizations using the steel articles that are engaged in "business activities (e.g., construction, manufacturing or supplying steel to users) in the United States" may request an exclusion.
- There is no time limit on when the exclusion request can be submitted.
- Exclusion requests will be considered on a "rolling basis," that is, based upon when the request was filed in complete form, with the Commerce regulations providing that the Department's review process "normally will not exceed 90 days."
- The regulations state that approved exclusions will be effective "five business days after publication of the response," although this effective date appears to have been overwritten by yesterday's Presidential Proclamations, as noted above.
- Approved exclusions will be limited to the individuals or organizations making the request, although other individuals or organizations may submit "follow-on" applications to take advantage of exclusions granted to others.
- The regulations provide that an exclusion "will only be granted if an article is not produced in the United States in a sufficient and reasonably available amount, is not produced in the United States in a satisfactory quantity, or for a specific national security consideration."

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- Exclusions will "generally be approved for one year," so that presumably some additional application process would be necessary thereafter.
- The regulations also provide that the Commerce Department will provide to U.S. Customs and Border Protection "information that will identify each approved exclusion request," and that CBP may require additional reporting by importers relating to the exclusions.

The exclusions process outlined above is comparable to, but in many ways more detailed and burdensome than, the exclusion process that the United States government applied following President Bush's 2001 Proclamation of increased tariffs pursuant to Section 201 on various steel products. Our substantial involvement in those exclusion proceedings indicated that it was very important to follow-up the exclusion request in a number of ways, including contacts with domestic producers and those involved in the other federal agencies with input into the process. We would expect the exclusion proceedings involving these Section 232 Presidential Proclamations to involve a similar process.



Gibson Dunn's lawyers would be pleased to advise concerning any specific concerns or issues relating to the increased Section 232 tariffs on steel and aluminum products. Please contact the Gibson Dunn lawyer with whom you usually work, or the author:

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