

Client Alert

International Trade & Litigation Practice Group

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The Department Of Commerce Announces Process For Requesting Product Exclusions to Section 232 Steel and Aluminum Tariffs

On March 8, 2018, President Trump exercised “his authority to impose a 25 percent tariff on steel imports and a 10 percent tariff on aluminum imports” under Section 232 of the Trade Expansion Act of 1962. Customs and Border Protection will begin collecting these tariffs on March 23, 2018.

In the Presidential Proclamations ordering those tariffs, President Trump instructed the Department of Commerce (“Commerce”) to create a mechanism for U.S. parties to apply for exclusion of specific products based on “demand that is unmet by domestic production or on specific national security considerations” that will be managed by Commerce in consultation with other Federal agencies. On March 19, 2018, via an Interim Rule published in the Federal Register, Commerce announced the procedure for requesting such an exclusion. Exclusions granted by Commerce will be for a single type of steel or aluminum product and be applicable only to the individual or organization making the exclusion request, unless a broader exclusion is approved by Commerce. Approved exclusions will remain in place for one year.

Only individuals or organizations operating in the United States that use steel or aluminum products in business activities (such as construction, manufacturing, or supplying to users) in the United States may submit an exclusion request for that steel or aluminum product. Each request must specify the business activities in the United States that qualify the requestor to make an exclusion request. Separate requests must be made for each individual type of steel or aluminum product. Exclusions will only be granted in cases where “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 quality, or for a specific national security consideration.” Commerce has created a form that must be filled out as part of any exclusion request. In addition to this form, each request is limited to 25 pages in length, including all exhibits and attachments. Exclusion requests must be submitted in electronic form.

After an exclusion request is made, it will be made public via the regulations.gov web portal. From the time of posting on the web portal, “any individual or organization in the United States” will have 30 days to file an objection to that exclusion request. Objectors to an exclusion

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request should provide “specific information on the product that their company can provide that is comparable to the product that is the subject of the exclusion request.” Like the initial exclusion requests, objections are limited to 25 pages in length (in addition to a required form), including all exhibits and attachments, and must be submitted in electronic form.

After this 30 day objection period, Commerce will take 60 days for review and to make a determination on the exclusion request. Therefore, total processing time for exclusion requests from filing to decision is 90 days. Granted exclusions will be effective five days after publication of Commerce’s determination on the [regulations.gov](http://www.regulations.gov) web portal.

Individuals and organizations are permitted to request exclusions for products that have already been granted an exclusion for another party. Likewise, individuals and organizations also are permitted to request exclusions for products when a prior request for exclusion already has been denied, however, the requester should submit new or different information to meet the criteria for an exclusion.

Forms and further information can be found [here](#) for steel products and [here](#) for aluminum products.

Products Subject to Tariffs

For purposes of the steel tariffs, covered “steel articles” are those defined at the 6-digit Harmonized Tariff Schedule (“HTS”) level as: 7206.10 through 7216.50, 7216.99 through 7301.10, 7302.10, 7302.40 through 7302.90, and 7304.10 through 7306.90.

For purposes of the aluminum tariffs, covered “aluminum articles” are those defined in HTS as: (a) unwrought aluminum (HTS 7601); (b) aluminum bars, rods, and profiles (HTS 7604); (c) aluminum wire (HTS 7605); (d) aluminum plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); (e) aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and (f) aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70).

Country Exclusions to the Section 232 Tariffs

Imports of steel and aluminum originating from Canada and Mexico will be exempted from the tariffs during the renegotiation period for the North American Free Trade Agreement (“NAFTA”), with the President explaining that any permanent exclusion would need to be part of a final re-negotiated NAFTA deal. Other countries may also seek modifications or exemptions from the tariffs through negotiations with the United States. This process will be handled by the USTR, who will work under the direction of the President to assess whether “modification or removal of the tariffs” is possible where “alternative means are agreed upon to ensure imports from a country no longer threaten to impair our national security.” A White House Fact Sheet on the Section 232 tariffs is available [here](#).

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