On March 8, President Trump signed official proclamations implementing tariffs on steel and aluminum products, under section 232 of the Trade Expansion Act, as amended. During the signing, he announced tariffs of 25 percent on foreign steel and 10 percent on foreign aluminum, except for imports from Canada and Mexico. He announced that these actions were taken in response to steel and aluminum articles "imported into the United States in such quantities and under such circumstances as to threaten to impair the national security of the United States." These tariffs will go into effect on March 23, 2018 for all countries that are not exempted.

There are two mechanisms that could provide some relief for affected companies. The first mechanism is the ability of certain countries, with which the US have security relationships, to be exempted completely as long as they can assure the US Administration that there are "alternative ways to address the threatened impairment of the national security caused by imports from that country." The second mechanism allows domestic companies to request to exclude steel articles "for which the Secretary determines there is a lack of sufficient US production capacity of comparable products", or for "specific national security-based considerations."
Country exemptions

The Administration will take 15 days, until March 23, to review requests for exemptions from countries with established security relationships with the United States, so long as these countries take concrete steps to address US national security concerns related to steel and aluminum imports from those countries. US Trade Representative Robert E. Lighthizer will oversee the review of country exemption requests. Senior administration officials indicated that countries seeking exemptions will need to negotiate bilateral deals to address US national security concerns. No additional details on this process have been provided at this time.

Moreover, the exemptions for Canada and Mexico are dependent on an agreement to address the threat to US national security caused by their steel and aluminum exports to the US. Administration officials specifically sought to confirm that an exemption on tariffs would not be directly tied to ongoing North America Free Trade Agreement (NAFTA) negotiations – however, in his remarks, President Trump did note that “we’re going to hold off the tariff on those two countries, to see whether or not we’re able to make the deal on NAFTA.”

Aluminum and steel exclusions

In addition to country exemptions, the proclamations also authorize the Secretary of Commerce to provide, upon request from any "directly affected party located in the U.S.", exclusion of steel or aluminum products for which the Secretary determines there is a lack of “sufficient and reasonably available amount or of a satisfactory quality” of comparable products in the US, or for “specific national security considerations.” These determinations will be made on a case-by case basis by the Secretary of Commerce in consultation with the Secretaries of State, Treasury and Defense and with the USTR, and other executive branch officials. By March 18, the proclamation requires that the Secretary of Commerce issue procedures for how requests for exclusions can be made.

In 2001, when then-US President George W. Bush issued similar tariffs on steel products (under a different authorization), a process was established that set forth criteria for the evaluation of requests to exclude products from tariffs. That process may be a model for how the Secretary of Commerce will establish procedures for this current Section 232 trade action. Additionally, based on the recommendations in the Secretary of Commerce’s January report on this Section 232 investigation, the evaluation process for requests for exclusions may take up to 90 days.

Scope

This trade action applies broadly to many aluminum and steel products, but not to all. The products to which this trade action is applicable are outlined below.

Steel articles affected by this trade action include those with the Harmonized Tariff Schedule (HTS) 6-digit 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, including subsequent revisions to these HTS provisions.

Aluminum articles affected by this trade action include those with the Harmonized Tariff Schedule (HTS) 6-digit level 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), including subsequent revisions to these HTS provisions.

Background on Section 232 investigation

This decision is the culmination of Section 232 investigation, initiated by the US Department of Commerce on April 19, 2017, of the national security impacts of steel and aluminum imports. The Department of Commerce held hearings on the Section 232 investigation and the Secretary of Commerce made recommendations to President Trump on January 11, 2018. In that report, the Secretary of Commerce recommended, due to the threat to national security from steel imports, that actions be taken to adjust the level of steel imports.

Congressional response

President Trump initially announced that he would impose a global tariff on steel and aluminum imports from all countries. After subsequent pushback from members of both houses of the US Congress and from within the
Administration, the President signaled he would be open to exemptions for certain countries. Congress has been actively engaged with the Administration expressing their concerns about the broad scope of this trade action and is likely to continue to be engaged during this ongoing process of reviewing exemptions and exclusions.

EU response

The trade measures announced by President Trump have led to strong reactions across Europe. The European Union prepared a draft-set of counter-measures in April 2017 and has moved swiftly to make its position clear in response to the announcement of tariffs.

The European Commission has announced that it plans to undertake the following three actions:

- Consider challenging the US measures before the WTO’s dispute settlement body.
- Launch its own safeguard investigation on steel and aluminium imports.
- Adopt counter-measures on US products, targeting steel, industrial and agricultural products.

Conclusion

Given the risk of considerable economic impact, companies likely to be affected are invited to consult with DLA Piper regarding the implications of the US actions and the EU response for their business. DLA Piper’s global team stands ready to provide guidance to clients regarding the expected developments of this upcoming trade dispute in the US, Europe and other countries around the world.

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