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## President Trump Issues Proclamation Imposing Tariffs on Steel and Aluminum Imports

MARCH 9, 2018

Yesterday President Trump signed two Proclamations that impose 25 and 10 percent tariffs on imports of certain steel and aluminum products, respectively, other than those imported from Canada and Mexico. The imposition of these tariffs, pursuant to Section 232 of the Trade Expansion Act of 1962, reflects the President's concurrence with the Department of Commerce's [findings](#) that such imports threaten to impair the national security of the United States.

Under the Proclamations, U.S. Customs and Border Protection will impose the tariffs beginning on March 23, 2018 and the tariffs will remain in place indefinitely.<sup>1</sup>

Key elements of the [steel](#) and [aluminum](#) Proclamations include:

**Tariff level:** The Proclamations impose the expected 25 and 10 percent tariffs on certain steel and aluminum products, but leave open the possibility of future upward or downward adjustments.

**Scope:** Unless further limited in annexes that are not yet publicly available (but should become available within the coming days), the tariffs will apply to imports falling into the below-listed U.S. Harmonized Tariff Schedule (HTS) categories from countries other than Canada and Mexico.

**Steel:** HTS 7206.10 through 7216.50; HTS 7216.9 through 7301.10; 7302.10; 7302.40 through 7302.90; and 7304.10 through 7306.0.

**Aluminum:** unwrought aluminum (HTS 7601); aluminum bars, rods, and profiles (HTS 7604); aluminum wire (HTS 7605); aluminum plate, sheet, strip, and foil (flat rolled products) (HTS 7606 and 7607); aluminum tubes and pipes and tube and pipe fitting (HTS 7608 and 7609); and aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70).

**Initial Country Exemptions:** The Proclamations initially exempt imports from Canada and Mexico from the tariffs on the grounds that the two countries “present a special case.” However, the Proclamations link the exemptions to “ongoing discussions” with the two countries and efforts by Canada and Mexico to prevent transshipment of steel and aluminum from other countries into the United States. It is therefore unclear how long the Canadian and Mexican exemptions will last.

*Additional Country Exclusions:* Additional country-wide exclusions could be granted to other U.S. allies. The Proclamations specifically invite “[a]ny country with which we have a security relationship ... to discuss with the United States alternative ways to address the threatened impairment of the national security caused by imports from that country.” They state that “[s]hould the United States and any such country arrive at a satisfactory alternative means to address the threat to the national security ... I may remove or modify the restriction on [steel and aluminum] articles imports from that country.”

*Product Exclusions – Timing:* The Proclamations require that the Department of Commerce establish procedures within 10 days to administer exclusion requests. We expect these procedures will specify the types of information that must be included in a request.

*Product Exclusions – Basis:* The Proclamations delegate authority to the Secretary of Commerce to exclude from the tariffs those goods “determined not to be produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” and also to provide such relief “based upon specific national security considerations.”<sup>2</sup>

These exclusion criteria are broader than what the Department of Commerce recommended in its reports to the President under Section 232, where it contemplated exclusions based only on a lack of sufficient U.S. production capacity of comparable products. The Proclamations, by contrast, allow the Department of Commerce to consider (in addition to national security considerations) not merely production capacity but supply, as well as product quality.

*Product Exclusions – Standing:* The Proclamations state that only “a directly affected party located in the United States” may make an exclusion request. In its forthcoming procedures, the Department of Commerce will likely provide some guidance as to which types of entities will qualify as a “directly affected party.”

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We expect that dozens or even hundreds of exclusion requests will be submitted, and that other interested parties will have an opportunity to submit comments for or against exclusion requests. It is possible that the Department of Commerce – as it suggested in its reports to the President – will consider such requests on a rolling basis. Alternatively, the Department of Commerce could set a single deadline for requests and another for comments. Companies that are considering exclusion requests should begin developing information demonstrating that the products for which they seek exclusions are not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” or that “specific national security considerations” justify an exclusion.

As we noted in our alert earlier this week, companies and other interested parties should also continue to monitor U.S. court challenges as well as WTO challenges and countermeasures by foreign governments. Earlier this week, the European Union stated that it is contemplating retaliatory tariffs against imports from the United States of steel products, as well as certain apparel, cosmetics, vehicles, and agriculture products such as corn, peanut butter, whiskey, and tobacco. We also anticipate safeguard and other domestic trade investigations by countries responding to the

likely diversion of trade flows into their markets.

WilmerHale has been engaged on Section 232 issues since these proceedings began. Please contact us to explore ways we might assist you in developing effective approaches to these developments.

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<sup>1</sup> The Proclamations order the Secretary of Commerce to “inform the President of any circumstances that in the Secretary’s opinion might indicate that the increase in duty rate ... is no longer necessary.”

<sup>2</sup> The Proclamations direct the Secretary of Commerce to make such determinations in consultation with the Secretary of State, the Secretary of the Treasury, the Secretary of Defense, the United States Trade Representative, the Assistant to the President for National Security Affairs, the Assistant to the President for Economic Policy, and other senior Executive Branch officials.

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