

CLIENT ALERT

President Opts for Tariffs on Steel and Aluminum Imports

Mar.02.2018

On March 1, President Trump abruptly announced his decision to impose tariffs on steel and aluminum imports pursuant to Section 232 of the Trade Expansion Act of 1962. The day started with conflicting news reports as to whether the president would announce his decision to impose tariffs, followed by the spontaneous announcement by President Trump during a White House meeting with key U.S. steel and aluminum executives.

According to those in attendance, the president announced that the U.S. will impose a 25 percent tariff on all imported steel and a 10 percent tariff on all imported aluminum for an “unlimited period” of time. The president did not specify any country exemptions, nor did he discuss the process to exclude products from the scope.

There have only been 16 investigations pursuant to Section 232 since 1980, and the vast majority of those did not lead to any trade actions. Only twice before the current two investigations was any action taken. Import restrictions or increased tariffs were used during the oil embargo against Iran in 1979 and in the 1982 crude oil from Libya investigation.

President Trump threatened to start a trade war through an early morning tweet, “When a country (USA) is losing many billions of dollars on trade with virtually every country it does business with, trade wars are good, and easy to win. Example, when we are down \$100 billion with a certain country and they get cute, don’t trade anymore—we win big. It’s easy!” U.S. stock-index futures declined shortly after the President tweeted that “trade wars are good.” Investors are worried over the prospect of a global trade war, as all three main stock market benchmarks are on track for a two percent weekly loss. Shares of automakers and other consumers of steel and aluminum products are also in jeopardy since the president’s tweets.

Not surprisingly, the President of the European Commission, Jean-Claude Juncker is already preparing a proposal for dispute settlement consultations with the U.S. regarding the tariffs. Article XXI of the 1994 General Agreement on Tariffs and Trade includes a national security exception, which allows members to abandon their tariff obligations in times of war or national security emergencies. However, the extent of this exception has never been tested in dispute settlement, and countries may argue whether aluminum and steel fall within the scope of Article XXI.

Since the Secretary released the reports on both steel and aluminum, other countries have also announced potential retaliation on U.S. goods including orange juice, Kentucky bourbon, and Harley-Davidson motorcycles.

Exclusion Process

The official announcement is expected to be formally signed and released next week. Secretary of Commerce Wilbur Ross proposes a separate exclusion process through which affected U.S. parties may seek exclusions from the tariff for specific products based on the following criteria: (1) lack of sufficient U.S. production capacity of comparable products; and/or (2) specific national security-based considerations.

The Department of Commerce, in coordination with other agencies such as the Defense Department, will review requests from U.S. companies to exclude specific steel and aluminum products. The process to request product exclusions will likely be through a public comment process, which is similar process to the current Section 201 safeguard measures on solar cells.

Once the President signs the proclamation with the effective tariff date, the Department of Commerce will release the procedures to submit a request to exclude certain products from the import restrictions.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Daniel Cannistra

Partner – Washington, D.C.

Phone: +1 202.624.2902

Email: dcannistra@crowell.com

Robert Holleyman

C&M International President and CEO – Washington, D.C.

Phone: +1 202.624.2505

Email: rholleyman@crowell.com

Robert L. LaFrankie

Senior Counsel – Washington, D.C.

Phone: +1 202.624.2868

Email: rlafrankie@crowell.com

Cherie Waltermann

Senior International Trade Specialist – Washington, D.C.

Phone: +1 202.508.8889

Email: cwaltermann@crowell.com