

US suspends tariff exemptions on steel and aluminum for EU and NAFTA countries; EU, Canada and Mexico to impose retaliatory duties on a wide range of products

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Executive summary

On 31 May 2018, United States (US) Department of Commerce Secretary Wilbur Ross announced that President Trump signed two Presidential proclamations to suspend the previous exemptions granted for the additional tariffs of 25% on specifically defined articles of steel, and additional tariffs of 10% on specifically defined articles of aluminum goods imported into the US from Member States of the European Union (EU),¹ Canada and Mexico.

A statement released by the White House notes that the US has secured measures to address the impairment to the national security threatened by imports of steel and aluminum from Argentina, Brazil, and Australia, while noting that without such measures in place for imports from Canada, Mexico, or the EU, the Administration will continue discussions with each country, and remains open to discussions with other countries impacted by the tariffs.

Countries granted permanent exemption from the steel tariffs include Argentina, Australia, Brazil and South Korea, with annual import limitations applying to all but Australia. Permanent exemption from the aluminum tariffs has been granted only to Argentina and Australia, again with annual import limitations not applicable to Australia exports.

The additional tariffs and application of the quota limits established by these Proclamations will be imposed on imports from all other countries as of midnight 31 May 2018.

The White House statement says that the Administration will continue to monitor steel and aluminum imports in the interest of national security and will adjust the measures if determined necessary. It further asserts that the Section 232 steel and aluminum tariffs have already had major, positive effects on steel and aluminum workers and jobs and will continue to do so long into the future.

Detailed discussion

Background

The additional duties were first announced by President Trump on 8 March following the US Department of Commerce's investigations and recommendations to the President under Section 232 of the *Trade Expansion Act of 1962*, as amended, which concluded that imports of certain steel and aluminum products "threaten to impair the national security of the United States."² The effective date for the tariffs was 23 March. Prior to the effective date, temporary exemptions pending further negotiation were provided to Canada, Mexico, the EU, Argentina, Australia, Brazil and South Korea. A detailed list of the products subject to the tariffs may be found in the EY Global Tax Alert, [US President Trump imposes tariffs on steel and aluminum products - Mexico and Canada excluded](#), dated 9 March 2018.

On 30 April 2018, President Trump signed two Presidential proclamations extending the exemption status, until 1 June 2018, for the duties applicable for subject steel and aluminum goods imported into the US from the EU, Canada and Mexico. Under the same proclamations, Argentina, Australia, and Brazil were granted permanent exemption for both additional steel and aluminum tariffs, whereas South Korea was granted permanent exemption only from the additional steel tariffs.

The exemptions provided for the EU, Canada and Mexico allowed time for the US to negotiate key trade provisions and amendments to agreements such as the North American Free Trade Agreement (NAFTA) with Canada and Mexico or to seek reductions in tariff barriers such as automobile tariffs in the EU.

Latest developments

In the latest proclamations, the US has determined that sufficient time was provided for discussions regarding the effect of imports of steel mill and aluminum articles on national security with the EU Member States, Canada, Mexico, Argentina, Australia and Brazil. The Administration engaged in these discussions with each of the country

noting that they have security relationships with the US. The proclamations further note that the US has now reached agreement on a range of measures with Argentina, Australia and Brazil to reduce excess steel production and excess steel capacity, increase capacity utilization in the US and prevent the transshipment of steel articles and import surges that impact the domestic market.

As reported on 1 May 2018,³ the permanent exemptions provided to Argentina, Australia and Brazil were to be finalized within 30 days. The latest proclamations now provide the details of the latest agreements between the US and each country, including specific import quota and volume limitations for some.

The quotas will be based on imports since 1 January 2018 and specifically apply to certain tariff subheadings of subject products. The effectiveness of the quotas from each country will be closely monitored and the President has noted specifically in the proclamations however, that if the satisfactory alternative means necessary to finalize the agreement are not achieved in a reasonable time period, re-imposition of the tariffs is possible.

The latest proclamations do not adjust the prior restrictions applied for US Foreign-Trade Zone (FTZ) admissions and US Duty Drawback Program restrictions. Specifically, US FTZ admissions of articles subject to Section 232 duties at the time of import are restricted to the applicable additional duty rates regardless of resultant manufacturing. However, it should be noted that merchandise produced in an FTZ from non-subject articles, but bearing a tariff number subject to Section 232 at time of withdrawal and entry from the FTZ are not subject to the additional duties. For manufacturers, this means that value-added processes conducted in a US FTZ on non-subject goods will not result in a punitive duty cost and should be considered.

Still in place is the inclusion of a restriction on using the US Duty Drawback program for any article of steel or aluminum subject to additional duties under the Section 232 orders. Importers who also have export operations will need to evaluate impact of this restriction for articles ultimately exported from the US to other markets.

What to expect next

The EU, Canada and Mexico swiftly announced retaliatory actions to be taken commensurate with the anticipated duty impacts to their respective country exports. Steel and aluminum from Europe is used in many US industries

and there is concern as well of transshipment of certain materials from China through the EU. Additionally, the US is seeking reduction of automobile tariff rates into the EU and likely will continue to do so as an offset for removing the steel and aluminum tariffs. Specific products targeted by the EU include, certain fruits and vegetables, cereals, tobacco, cosmetics, apparel/footwear, certain steel and aluminum products, motorcycles and video game consoles. More details on the EU's actions and a complete list of the targeted products is provided in the EY Global Tax Alert, [*EU Counters US safeguard measures with possible imposition of significant import duties on various US products*](#), dated 21 May 2018. Further, the EU has announced that it will seek dispute settlement under the World Trade Organization procedures as well.

Canada also announced retaliatory actions on 31 May, publishing two lists of goods that will have tariffs of 25% and 10% applied⁴ respectively to US\$16.6 billion⁵ of US goods exported to Canada. Canada's target list comprised of a long list of US products ranging from flat-rolled steel, mirroring the US tariffs, to US yogurt, meat, jam, playing cards, post cards, toilet paper, motor boats, mattresses and felt-tipped pens, among others. Canada announced that the goods were specifically targeted to end-use items which would reduce price inflation risks to Canadian manufacturers, as well as to products in which alternative country sourcing readily exists to limit impact to Canadian consumers. The tariffs are set to take effect on 1 July 2018 and will remain in place until the US removes the reciprocal steel and aluminum tariffs imposed on Canadian exports to the US.

Canada is the largest exporter of both steel (\$4.2 billion in 2017) and aluminum (\$7.2 billion) to the US. Considering the unique trade relationship and reliance of both countries, flows between Canada and the US will likely have impact and disruption on global trade and operational costs. Canada has also announced that it will pursue a dispute settlement filing with regards to the duties imposed by the US.

Mexico's Economy Secretariat, following the announcement of the US proclamation actions, also stated that the Mexican Government will take reciprocal measures against the US. Not surprisingly, US produced steel and aluminum products top the Mexican retaliatory duty list; other products include lamps, pork products, food preparations, apples, grapes, blueberries and cheese. The duties will be in force until the US Government eliminates the tariffs, according to the Secretariat.

Mexico is the top buyer of US aluminum and second top buyer of steel from the US, it states and notes that these materials are used to increase competitiveness in a variety of strategic and highly integrated industry sectors in North America such as automotive, aerospace, electric and electronic businesses, among others.

In the statement, Mexico further reiterated its position against protectionist measures which affect and distort international trade of goods, such as the actions being taken by the US.

The US states that it will continue to engage with Canada and Mexico in the negotiations on NAFTA, which are now in the "Permanent" Round. All three countries are working diligently to resolve a number of key points, and notably the issues on steel and aluminum will have direct impact on the renegotiations of the specific auto content rule of origin being considered for automobiles and auto parts.

Actions for businesses

While the latest proclamations establish permanent country exemptions and quotas, importers should consider that the original Presidential proclamations acknowledged that for certain articles of steel and aluminum there is a lack of sufficient US production capacity of comparable products, and provided a process for the Commerce Secretary to exclude import restrictions on those steel articles as necessary based on requests by affected domestic parties. However, this process has seen a significant number of requests, exceeding 10,500, with only a small number having been processed and posted for requisite public comments.

Importers and exporters of steel and aluminum products under the scope of both orders, as now amended, and those who use steel and aluminum products made from the subject products, may still be significantly impacted by the additional duties imposed despite the announced country exemptions. Particular attention will need to be paid to the quotas as they are implemented as well for goods sourced from subject countries. Many businesses which import steel and aluminum from the EU, Canada and Mexico have counted on exemptions being extended or made permanent; these businesses in particular will need to develop contingency plans with a very short lead time. As previously commented, it will be difficult for many companies to adjust supply chains or sourcing patterns quickly, if they can be adjusted at all, and consequently companies may incur significant excess costs.

The retaliation lists announced by the EU, Canada, and Mexico are quite extensive, and involve a large variety of products. US exporters will want to carefully review the list against trade data, and then map supply chains to determine the impact of targeted items. And, the retaliatory lists may not remain static. Mexico has already suggested that it

may well “carousel” products, changing the list frequently. Consequently, any exporters to Canada, Mexico, or the EU should map end-to-end supply chains to be able to understand consequences and have the data to make agile changes if necessary.

Endnotes

1. The EU Member States include: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.
2. See EY Global Tax Alert, [US Department of Commerce proposes duty surcharge on steel and aluminum imports](#), dated 20 February 2018.
3. See EY Global Tax Alert, [United States: Exemption of tariffs on steel and aluminum products reached for some countries - others extended until 1 June](#), dated 1 May 2018.
4. <https://www.fin.gc.ca/activity/consult/cacsap-cmpcaa-eng.asp>.
5. Currency references in this Alert are to US\$.

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