Living With Section 232 – Exclusion Process Update

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Overview of Section 232 Tariffs
Why Are Section 232 and Section 301 Unique?

• Government-instituted trade remedies

• Significantly different than AD/CVD and Safeguard Statutes:
  ➢ No required showing of “injury” to a U.S. industry
  ➢ No required showing of trade-related “unfairness”
  ➢ Self-initiated process by the U.S. Government
  ➢ Unilateral action with confusing procedures
The President’s 232 Proclamation

- Imposes additional tariffs
  - 25 percent on certain steel products
  - 10 percent on some aluminum products
- Increased tariffs took effect March 23, 2018. Assume to be in effect for the foreseeable future.
- Countries currently with exemptions include Argentina, Australia, Brazil and South Korea.
- On April 17, 2018, India requested consultations with the U.S. at the WTO under the Safeguards Agreement along with the EU, China and Russia. The Dispute Settlement Body named panel members (from the Philippines, Chile and Uruguay) on January 25, 2019, who will examine and offer findings in this proceeding.
- Exclusions have been granted for certain products but are still not guaranteed.
What’s Included

All steel articles entering the U.S. under HTS:

- 7206.10 through 7216.50 (including ingots, bars, rods and angles)
- 7216.99 through 7301.10 (including bars, rods, wire, ingots and sheet piling)
- 7302.10 (rails)
- 7302.40 through 7302.90 (including plates and sleepers)
- 7304.10 through 7306.90 (including tubes, pipes and hollow profiles)

All aluminum products entering the U.S. under HTS:

- 7601 (unwrought aluminum)
- 7604 (bars, rods and profiles)
- 7605 (wire)
- 7606 (plate, sheet, strip and foil - flat rolled products)
- 7608 and 7609 (tubes and pipes, and tube and pipe fittings)
- 7616.99.51.60 and 7616.99.51.70 (aluminum castings and forgings)
Section 232 Tariffs – In With The Old
Product Exclusion Requests

Section 232 Exclusions Requests
Secretary of Commerce may grant an exclusion for steel/aluminum products if there is:

- National security considerations
- Insufficient U.S. production
- Exclusion requests handled by Commerce
Product Exclusion Timeline

90 days minimum to obtain an exclusion.

Likely to take longer – AND – exclusions are only in effect for ONE year after date on which memo is signed granting exclusion.
Exclusion Form

Multi-page form which requires significant details on specifics related to the exclusion request:

- Requestor
- Importer of Record
- Ownership information
- Type and quantity of product sought for exclusion
- Consumption requirements
- Requesting on behalf of a non-U.S. entity
- Ports of entry
- Specific chemical and physical characteristics for each product
- Source countries and manufacturer and supplier names
PROCEDURE

• Once an exclusion request is posted, there is a 30 day public comment period.
• If an objection is filed, there is a 7 day rebuttal period.
• If a rebuttal is filed, there is a 7 day sur-rebuttal period.
• The exclusion request is also reviewed by CBP to ensure the HTS code is accurate.
• Granted exclusions are retroactive to the date the request for exclusion was accepted.
• Generally, exclusion are effective for one year.
• Exclusion are specific to the company requesting the exclusion.
• Commerce has received over 38,000 steel product exclusion requests. Over 12,000 have been granted and over 4,000 have been denied.
• Commerce has received over 6,000 aluminum exclusion requests with over 800 granted and over 100 denied.
Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued

1. Average annual consumption for years 2013-2015 of the steel product that is subject to the Exclusion Request - Algorithm

2. Explain why your organization requests an Exclusion on the basis of (check all that apply) and/or any comments in the space provided below.

3. Comments:

   a. Identify the percentage of total steel product consumed under the Exclusion Request not available from domestic sources in the United States.
   b. Estimate the number of days required to deliver the steel product covered by the Exclusion Request from the time the purchaser orders it by your organization.
   c. Estimate the number of days required to manufacture the steel product covered by the Exclusion Request from the time a valid purchase order is executed.
   d. Estimate the number of days required to ship the steel product covered by the Exclusion Request from the time a valid purchase order is executed.
   e. Estimate the number of days required to ship the steel product covered by the Exclusion Request from the time a valid purchase order is executed.

(Identify the Exclusion Periods through which the steel product subject to the Exclusion Request would be excluded)

4. Is the organization making this Exclusion Request taking action on behalf of any other U.S. producers that do not manufacture steel products in the United States?

   a. Yes
   b. No

   Comments:

5. For this single Exclusion Request, provide a complete description of the product(s) in the space provided below. *See explanation below.

   The production data for an Exclusion request may be required at a later stage.

   a. With respect to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited only to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.), and must describe the product to the extent it is subject to the Exclusion Request (e.g., “304 stainless steel pipe,” “316 stainless steel pipe,” “310 stainless steel pipe,” etc.).

   b. Each physical property should be defined, as well as any other specific assessments or references to specific dimensions (e.g., “6-inch nominal diameter of 550 mm”) or measurements (e.g., “yield strength of 302,000 psi.”) In cases where certain material properties are not measurable or the property does not apply to the product (e.g., “304 stainless steel pipe,” “316 stainless steel pipe,” “310 stainless steel pipe,” etc.), the description should state whether or not the property applies to the product.

   c. Identify the standards organizations that have set specifications for the product that is the subject of the Exclusion Request, and provide the identification number(s) (e.g., ASTM A312-95).

   d. *See explanation below.

   e. Comments:

6. General Product Description

   a. Identify the classification and description of the steel product covered under the Exclusion Request. Other classification or properties may be described in the Comments box.

   b. (Select all that apply)

   c. Comments:
### Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued

#### Chemical Composition

<table>
<thead>
<tr>
<th>Chemical</th>
<th>Alumin</th>
<th>Aluminum</th>
<th>Boron</th>
<th>Carbon</th>
<th>Chromium</th>
<th>Cobalt</th>
<th>Copper</th>
<th>Manganese</th>
<th>Nickel</th>
<th>Phosphorus</th>
<th>Silicon</th>
<th>Sulfur</th>
<th>Tin</th>
<th>Lead</th>
<th>Magnesium</th>
<th>Molybdenum</th>
<th>Tungsten</th>
<th>Yttrium</th>
<th>Zirconium</th>
<th>Other (\text{USG}^\dagger)</th>
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#### Comments

- [Text]

#### Steel Product Specifications (Millimetres)

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#### Strength

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<thead>
<tr>
<th>Test Type</th>
<th>Mean Value</th>
<th>Test Type</th>
<th>Mean Value</th>
<th>Test Type</th>
<th>Mean Value</th>
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</thead>
<tbody>
<tr>
<td>Tensile</td>
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<td>Ductility</td>
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<td>Impact</td>
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<td>Min.</td>
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<td>Max.</td>
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<td>Min.</td>
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#### Compliance

- [Text]

#### Comments

- [Text]

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### Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued

#### Product Availability Information

1. Does the Requestor possess knowledge of any domestic US parties to the [scenario] manufacturing the described steel product in the United States?
   - [Yes/No]
   - [Text]

2. Are there any domestic US parties to the [scenario] manufacturing the steel product described in the Exclusion Request?
   - [Yes/No]
   - [Text]

3. Are there any domestic US parties to the [scenario] manufacturing the steel product described in the Exclusion Request?
   - [Yes/No]
   - [Text]

#### Comments

- [Text]

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**NOTE:** Steel products exceeding 15 millimeters in thickness may require separate Exclusion Requests for each thickness band.
Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued

Has the Exclusion Requester attempted to purchase the described product that is the subject of this Exclusion Request, or substitute, from a U.S. manufacturer in the past six years? If "Yes" identify the manufacturer(s), addresses, and part numbers of contact at the U.S. steel manufacturing organization in the space below.

Comment:

Has the Exclusion Requester had any past contracts or does it have current contracts with steel producers that manufacture in the United States the steel product identified in the Exclusion Request? If "Yes" identify the U.S. steel manufacturer(s), addresses, and part numbers of contact at the U.S. manufacturing organization in the space below.

Comment:

Has the Exclusion Requester determined that they use U.S. manufacturing that produces a steel equivalent to the product that would meet qualification requirements? If "Yes" identify in the space below the location and procedures employed to make that determination (e.g., reference documents, etc.)

Comment:

In the last twelve months, has the Requester purchased a supporting material or service in the United States in place of the steel product described in the Exclusion Request? If "Yes" provide supporting information in the space below.

Comment:

Provide a detailed explanation as to how U.S. Commerce and Border Protection (CBP) will be able to correctly distinguish the steel product subject to the Exclusion Request at the time of entry without adding undue burden to the importing process and procedures.

Comment:

Exclusion Request Submitters: This Exclusion Request is hereby completed and submitted as required by the Office of Special Regulations under Executive Order 6002/30806/146 by the U.S. Department of Commerce. All information submitted will be subject to public disclosure regardless of any statements by Requester that some information should be treated otherwise. Any further information required as part of this Exclusion Request will be determined and requested by the U.S. Department of Commerce.

Submission of Supporting Documents (Attachments): Supporting documentation should be submitted to the agency using as a base file, attachments only if PDF and not more than 2 megabytes per attachment. Email to: steel@doc.gov

Other Comments:

I have additional information to provide that is proprietary or otherwise business-confidential and is relevant and necessary to the application:

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.

CERTIFICATION

The undersigned certifies that the information contained in this response to this questionnaire is complete and correct to the best of his knowledge. It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction. [18 U.S.C. 1001 (1985), 5 PP. 650].

Company Name:

Name of Authorizing Official:

Title of Authorizing Official:

Phone Number:

Email of Authorizing Official:

If the Point of Contact is different from the Authorizing Official provide point of contact information below:

Point of Contact Name:

Title:

Email Address:

Phone Number:

Paperwork Reduction Act Notice

This information collection is being conducted for the collection of information to determine an average of 4 hours per response, including the time to review instructions, search existing data sources, gather and sort required information, and complete and submit the collection of information. Send comments regarding the burden estimate or any other aspect of the collection of information, to OMB's Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, U.S. Department of Commerce, Washington, DC 20230. Comments not collected in this information, and you are not required to respond, unless the OMB has required us to do so through the Paperwork Reduction Act.
Exclusion Form: Some Specifics

Over 70 different product characteristics have to be individually identified.

### Exclusion Request Product Information

For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below.

The product for which an Exclusion is being requested is defined as follows:

2.j. "With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).

All such physical properties must be defined based on actual, rather than nominal, measurements. References to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%, etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.

Comments:
Exclusion Form: Some Specifics

### Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued

Identify the chemical composition of the specific steel product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.

#### Chemical Composition

<table>
<thead>
<tr>
<th>Chemical</th>
<th>Aluminum</th>
<th>Silicon</th>
<th>Chromium</th>
<th>Manganese</th>
<th>Molybdenum</th>
<th>Nickel</th>
</tr>
</thead>
<tbody>
<tr>
<td>Min. %</td>
<td></td>
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<tr>
<td>Max. %</td>
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</tr>
</tbody>
</table>

3a. New form for each size

#### Steel Product Specifications (Millimeters)

<table>
<thead>
<tr>
<th>Steel Product Specifications (Millimeters)</th>
<th>Strength</th>
<th>Toughness (if Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thickness</td>
<td>Inside Diameter</td>
<td>Outside Diameter</td>
</tr>
<tr>
<td>Min.</td>
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<td>Max.</td>
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</table>

3b. New form for each size

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Every single physical characteristic to be reported

New form for each size
Exclusion Form: Some Specifics

The level of detail and specificity will lead to subjective evaluations. The steel experts and aluminum experts are not tasked with the product evaluation.

<table>
<thead>
<tr>
<th>Global Ductility</th>
<th>Local Ductility (If Applicable)</th>
<th>Magnetic Permeability (If Applicable)</th>
<th>Surface Finish (If Applicable)</th>
<th>Coating Type and Composition (If Applicable)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Elasticity</td>
<td>Reduction in Area %</td>
<td>Bendability</td>
<td>Magnetic Permeability</td>
<td>Frictional - [24E,991]</td>
</tr>
<tr>
<td></td>
<td></td>
<td>[Bend Radius/Steel Thickness (millimeters)]</td>
<td>[Greater Lab Method]</td>
<td>Costing Method</td>
</tr>
<tr>
<td>Min/Max</td>
<td></td>
<td></td>
<td></td>
<td>Costing Product Name and Abbreviation</td>
</tr>
</tbody>
</table>

Select any additional processing methods used: Other (specify)

Comments:
Section 232 Tariffs – Current Situation
Exclusion Statistics

• Approximately 60% of Steel Exclusions Requests are still awaiting decisions

• Although originally expected to take just 90 days to review – in reality it is taking much longer

• As of March 31, 2019 –
  ➢ There were a total of 45,328 steel exclusion requests
  ➢ 21,464 were approved, or barely 52.65% after 1 full year
  ➢ 17,276 were still pending
  ➢ 6,588 have been denied
  ➢ 19,543 requests had objections filed
  ➢ 778 separate companies have requested exclusions
Section 232 Tariffs – Real Effects
The Real Effects of the 232 Tariffs

- Judging from stock prices – Trump may be viewed as destroying the steel industry instead of helping it
- U.S. Steel Mill imports were down 11.3% in 2018 compared to 2017
- U.S. importers has paid roughly $23 billion in additional duties in 2018
- Steel prices continue to go up
- As of the middle of January 2019 – steel stocks lagged the S&P by nearly 20%
- Who’s Benefitting?
  - Nucor’s profit was up $1 billion or 79%
  - Steel Dynamics’ profit increased $445 million or 55%
  - AK Steel’s profit rose $83 million or 80%
  - U.S. Steel profit was up by $728 million or 188%
- Who’s Paying?
  - Importers of steel of any kind – higher prices and costs
  - Ford claims that tariffs cost the car maker $750 million
  - Caterpillar’s costs for tariffs was $100 million and will double in 2019
The Real Effects of the 232 Tariffs

• The trade deficit increased by $1 Billion as exports fell by 7% and imports rose by 1%.
• Average price of steel per ton increased as a result of the additional tariffs, and these additional costs are borne by U.S. consumers.
• Retaliatory tariffs by Canada and Mexico contributed to a $650 million decline in American Steel Exports, but imports from these countries continued to increase because they are deeply integrated into U.S. supply chains.
• Tariffs had minimal if negligible impact on Chinese imports as steel is already subject to 28 separate dumping and CVD orders.
• 232 tariffs effectively reduced imports from Turkey, Russia and South Korea
• Little effect on jobs in the U.S. steel industry – just 200 jobs in the steel industry were added in 2018.
• Net economic loss as a result of increased tariffs was $7.8 billion in 2018 or 0.04% of GDP.
Section 232 Tariffs – Out with the New
The New Exclusion Process

???
The New Exclusion Process

• Supposed to come out in May 2019

• Probably not on current regulations.gov platform

• Focus the CBP assessment component at the start of the process to ensure enforceability and administrability

• Don’t know the form, the filing process, when, the timelines for granting exclusions
Section 232 Tariffs – Voldemort???
Key Actions if Facing 232 Duties

• Confirm Tariff Classification

  Binding ruling requests  Protests  Expert advice

• Exclusions Requests

Secretary of Commerce may grant an exclusion for steel/aluminum products if there is:

  insufficient U.S. production  national security considerations

Commerce published the interim rule for submission of exclusion requests on March 19.

• TWO Different Exclusion Processes

  Country exclusions: handled by USTR  Product exclusions: handled by Commerce

• Product Exclusion Timeline

  90 days minimum to obtain an exclusion

  Likely to take longer – AND – exclusions are only in effect for ONE year