

MAYER • BROWN

Aluminum 232 Investigation

Post-Proclamation Update

Matthew McConkey
202 263 3235
mmconkey@mayerbrown.com

March 17, 2018

Mayer Brown is a global services provider comprising legal practices that are separate entities, including Tauil & Chequer Advogados, a Brazilian law partnership with which Mayer Brown is associated (collectively the "Mayer Brown Practices"), and affiliated non-legal service providers, which provide consultancy services (the "Mayer Brown Consultancies"). The Mayer Brown Practices and Mayer Brown Consultancies are established in various jurisdictions and may be a legal person or a partnership. Details of the individual Mayer Brown Practices and Mayer Brown Consultancies can be found in the [Legal Notices](#) section of our website.

Section 232 Investigation Overview

- Investigation initiated by President on April 27, 2017
- Investigation conducted by Department of Commerce, subject to review/comment by other agencies
- Written submissions provided by June 23, 2017
 - AEC provided written comments
- Public hearing on June 22, 2017
 - AEC testified
- President issued proclamation on March 8, 2018

Presidential Proclamation on Adjusting Imports of Aluminum into the United States

- Generally, provides
 - Quantities of aluminum imports and global excess capacity weaken US economy and threaten national security by leaving US reliant on foreign producers
 - 10% *ad valorem* tariff on aluminum articles
 - Tariff is applied to the declared customs value, as reported on the US import entry documents
- No specific duration or termination date stated in Proclamation
 - Must assume will be in place until there are no longer national security concerns, or the President decides to lift some or all of the tariffs

Presidential Proclamation on Adjusting Imports of Aluminum into the United States

- Proclamation calls Canada and Mexico a “special case”
 - Currently exempted from tariffs, pending on-going NAFTA discussions
- Rumors circulating in media regarding exclusion of Australia
 - No official comments/information to confirm

Scope of the Aluminum Covered by Proclamation

- 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 fittings (HTS 7608 and 7609)
- Aluminum castings and forgings (HTS 7616.99.51.60 and 7616.99.51.70)

Product Exclusions

- To be formally released on Monday the 19th of March
 - https://insidetrade.com/sites/insidetrade.com/files/documents/2018/mar/wto2018_0129.pdf
- To request a product exclusion, must fill out the form at:
<https://www.bis.doc.gov/index.php/232-aluminum>
- Basis for granting exclusions (3):
 - The aluminum article is not produced in the US in sufficient or reasonably available amount
 - The aluminum article is not produced in the US of a satisfactory quality
 - “Specific national security considerations”

Product Exclusions

- Only individuals or organizations using aluminum articles can request an exclusion (AEC cannot)
- Must submit electronically, just complete the electronic form, and then submit electronically through the portal that will be at

<http://www.regulations.gov>

- Must submit electronic form, but can also include up to 25 additional pages (no more)
- No deadline to submit
- Review process supposed to take 90 days

Product Exclusions

- Approved exclusions will only apply to the individual or organization that submitted the request (via an “exclusion identifier”), though follow-on (“me too”) requests allowed
- Exclusions will be effective 5 days after publication of the approval
- Exclusions generally approved for just one year
- If DOC grants exclusion, but later the domestic industry comes in with evidence that they can now produce it, the DOC will revoke the exclusion

Product Exclusions

- Parties can oppose exclusion requests
- Oppositions must also be filed on an electronic form (with PDF attachment no larger than 25 pages)
- Must file opposition within 30 days of exclusion request being filed
- I know of no basis to appeal a denial of an exclusion request (administratively or in court).
 - In President's discretion to apply duties, so equally in his discretion to grant an exclusion or not

Country Exclusions

- President tapped US Trade Representative Robert Lighthizer to determine potential country exemptions
- Trump, in the Proclamation, said partners “with which we have a security relationship” were eligible to discuss the remedies with an eye toward arriving at “satisfactory *alternative* means” to address what the US says is the national security threat posed by steel and aluminum imports
- Trump also reserved right to “remove or modify the restriction on steel articles imports from that country and, if necessary, make any corresponding adjustments to the tariff as it applies to other countries as our national security interests require”
- Voluntary Export Restraints?

Questions to DOC When Completing Exclusion Request

Director, Industrial Studies
Office of Technology Evaluation
Bureau of Industry and Security
US Department of Commerce
(202) 482-4757
aluminum232@bis.doc.gov

QUESTIONS?

MATTHEW MCCONKEY
MAYER BROWN LLP
DIRECT: +1 202-263-3235
US CELL: +1 202-480-5019
MMCCONKEY@MAYERBROWN.COM