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CIT Injunction Offers Importers Potential Relief from Section 232 Derivative Product Duties

Why importers of steel and aluminum derivative products should consider challenging the administration's imposition of additional Section 232 duties:

The processes followed by the administration in implementing additional Section 232 tariffs on steel and aluminum products not originally included in the Section 232 duties are procedurally flawed.

The institution of additional duties on products not originally included in the Section 232 duties on steel and aluminum is potentially unconstitutional.

One party has already appealed the issue to the Court of International Trade (CIT) and obtained an injunction stopping U.S. Customs and Border Protection (CBP) from collecting duties on steel and aluminum derivative products.

The injunction is company-specific and will likely not apply to another company without a separate appeal and injunction being obtained.

Background

On February 13, 2020, CIT issued an injunction barring CBP from collecting new Section 232 tariffs on finished steel and aluminum products from a single importer, PrimeSource Building Products (PrimeSource). The preliminary injunction states that CBP cannot collect "duty deposits" on PrimeSource's entries of goods covered by these additional tariffs, which took effect on February 8, 2020. The injunction, however, sets specific bonding requirements while the merits of the appeal are being reviewed by CIT and

until a final judgment is issued in the case.

CIT's grant of the injunction stems from complaints filed on behalf of PrimeSource challenging the validity of the Administration's January 24 proclamation expanding the scope of existing Section 232 tariffs by imposing an additional 25 percent tariff on some steel and 10 percent tariff on some aluminum derivative products.

Covered products

Covered steel items and subheadings are:

Nails, tacks (other than thumbtacks), drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material (excluding such articles with heads of copper), suitable for use in powder-actuated hand tools, threaded (described in subheading 7317.00.30)

Nails, tacks (other than thumbtacks), drawing pins, corrugated nails, staples (other than those of heading 8305) and similar articles, of iron or steel, whether or not with heads of other material (excluding such articles with heads of copper), of one-piece construction, whether or not made of round wire; the foregoing described in statistical reporting numbers 7317.00.5503, 7317.00.5505, 7317.00.5507, 7317.00.5560, 7317.00.5580 or 7317.00.6560 only and not in other statistical reporting numbers of subheadings 7317.00.55 and 7317.00.65

Bumper stampings of steel, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705 (described in subheading 8708.10.30)

Body stampings of steel, for tractors suitable for agricultural use (described in subheading 8708.29.21)

Covered aluminum items and subheadings are:

Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and with steel core, not electrically insulated; the foregoing fitted with fittings or made up into articles (described in subheading 7614.10.50)

Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing comprising electrical conductors, not fitted with fittings or made up into articles (described in subheading 7614.90.20)

Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing not comprising electrical conductors, not fitted with fittings or made up into articles (described in subheading 7614.90.40)

Stranded wire, cables, plaited bands and the like, including slings and similar articles, of aluminum and not with steel core, not electrically insulated; the foregoing fitted with fittings or made up into articles (described in subheading 7614.90.50)

Bumper stampings of aluminum, the foregoing comprising parts and accessories of the motor 15 vehicles of headings 8701 to 8705 (described in subheading 8708.10.30)

Body stampings of aluminum, for tractors suitable for agricultural use (described in subheading 8708.29.21)

Applicability of the Section 232 injunction

The challenge filed by PrimeSource is a company-specific appeal related to the authority of the President to impose tariffs under Section 232 past the statutorily prescribed deadlines and processes for the institution of these special tariffs. Given that these additional tariffs were imposed almost two years after the original Section 232 duties were announced, the fundamental basis of the challenge is the procedural inconsistencies in the processes followed by the Executive Branch as well as the unconstitutionality of imposing these duties without adequate notice. CIT has instructed plaintiffs to specify the harm to each individual company in order for it to be able to review and potentially grant the requested relief.

What this means to you

Companies who import any of the covered products noted above should consider taking legal action to avoid significant additional duties on these steel and aluminum derivative products.

Contact us

Husch Blackwell continues to monitor the challenge against the Section 232 derivative product duties and will provide updates as more information becomes available. If your company is interested in

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pursuing an appeal or has any questions regarding the Section 232 duties, please contact a member of our International Trade and Supply Chain team.