

Trade Compliance Flash: Product-Specific Exclusions to the Steel and Aluminum Tariffs Offer a Glimmer of Hope

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By now, it is well known that last week, President Trump signed presidential proclamations which impose, effective March 23, 2018, additional tariffs of [25 percent on steel](#) and [10 percent on aluminum](#) imported from all countries except Canada and Mexico. The additional tariffs will cover most steel products classified in Chapters 72 and 73 of the Harmonized Tariff Schedule (HTS) and aluminum products classified in HTS 7601, 7604-7609 and 7616.99.51. **However, the proclamations open the door for specific products to be allowed entry into the United States without additional tariffs (to avoid situations where a domestic industry needs imports). Specifically, the proclamations authorize the Secretary of Commerce to exclude products from the tariffs if the goods are not produced in the United States in a sufficient and reasonably available amount or satisfactory quality and also for national security-based considerations.** Given the high standard, securing a product-specific exclusion will require a comprehensive fact-gathering and advocacy effort.

The specific procedures for exclusion requests will be issued by the Secretary of Commerce no later than March 19, 2018. If Commerce follows the same procedures that are currently in effect for the solar products safeguard measure that was instituted earlier this year, we expect that, in evaluating product-specific exclusion requests, the U.S. government will consider the following information:

- The names and locations of any producers, in the United States and foreign countries, of the particular product;
- Total U.S. consumption of the particular product, if any, by quantity and value for each year from 2014 to 2017, the projected annual consumption for each year from 2018 to 2022, and any related information about the types of consumers;
- Details concerning the typical use or application of the particular product;
- Total U.S. production of the particular product for each year from 2014 to 2017, if any;
- Any U.S. federal or state government contracts, especially national security-related ones, that involve the purchase of the particular product;
- The identity of any U.S.-produced substitute for the particular product, total U.S. production of the substitute for each year from 2014 to 2017, and the names of any U.S. producers of the substitute;
- Whether the particular product or substitute for the particular product may be obtained from a U.S. producer;
- Whether qualification requirements affect the requestor's ability to use domestic products;
- Whether the particular product is under development by a U.S. producer who will imminently be able to produce it in marketable quantities;
- Inventories of the particular product in the United States;
- Whether excluding the particular product from the tariffs would result in a benefit or advantage to the long-term competitiveness of the steel or aluminum supply chain in the United States, including by fostering research and development, supporting manufacturing innovation, or by leading to the development of differentiated products that command higher prices;

- The ability of U.S. Customs and Border Protection to administer the exclusion; and
- Any other information or data that interested persons consider relevant to an evaluation of the request.

Ultimately, a successful product-specific exclusion request will demonstrate (1) that the exclusion would benefit "a directly affected party located in the United States," and that (2) the product is not produced in the United States in a sufficient and reasonably available amount or satisfactory quality and/or should be excluded for reasons of national security.

The period in which parties may request exclusions will likely be limited to 90 days, so timing is critical. Interested companies should start preparing now and be ready to submit petitions as early as possible. Given its statutory authority over trade policy, the U.S. Congress will make every effort to ensure the executive branch administers the tariff exclusion process with fairness and full transparency. **We recommend companies contact their U.S. representatives and senators in Congress to notify them of any product-specific exclusion requests and enlist their support.**

For more information, please contact:

[Richard Mojica, rmojica@milchev.com](mailto:rmojica@milchev.com), 202-626-1571 (former Customs and Border Protection official)

[Welles Orr, worr@milchev.com](mailto:worr@milchev.com), 202-626-1481 (former U.S. Trade Representative official)

[Claire Rickard Palmer, cpalmer@milchev.com](mailto:cpalmer@milchev.com), 202-626-1575 (former U.S. Department of Commerce official)

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