

Metal Importers Beware Of New Expanded Tariff Risks

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President Donald Trump issued Presidential Proclamation 9980 on Jan. 24, expanding the product scope of existing tariffs imposed under Section 232 of the Trade Expansion Act of 1962 on certain articles of aluminum and steel.[1]

Effective Feb. 8, certain articles that are derivative of the aluminum and steel covered by the existing Section 232 tariffs will also be subject to the same tariff levels, i.e., 10% ad valorem for aluminum and 25% ad valorem for steel.

The derivative articles of aluminum covered by the Section 232 tariff expansion include certain stranded wire, cables, and plaited bands, and certain bumper and body stampings for certain vehicles.

The derivative articles of steel covered by the Section 232 tariff expansion include certain nails, tacks, drawing pins, corrugated nails, and staples, and certain bumper and body stampings for certain motor vehicles.

The proclamation authorizes the U.S. Department of Commerce to establish a process for U.S. persons to apply for exclusion from the expanded Section 232 tariffs upon a showing that the imported derivative article of aluminum or steel is not produced in the United States in a sufficient and reasonably available quantity, or to a satisfactory quality, or on national security grounds.

Background

In Presidential Proclamations 9704 and 9705, dated March 8, 2018, pursuant to Section 232 of the Trade Expansion Act of 1962, Trump ordered the imposition, respectively, of a 10% ad valorem tariff on certain articles of aluminum, and a 25% ad valorem tariff on certain articles of steel.

Trump imposed these tariffs following investigations conducted by the Department of Commerce, which found that U.S. imports of certain aluminum and steel impaired the national security of the United States. These tariffs took effect on March 23, 2018, and continue to apply today to imports from most countries.

Proclamations 9704 and 9705 instructed the secretary of commerce to monitor imports of the covered articles of aluminum and steel and to inform the president of circumstances that might warrant an adjustment to the tariffs.

Proclamations 9704 and 9705 constituted the first major use of Section 232 by the U.S. in decades to impose import restraints and represent a major component of the various trade restrictions known collectively as the Trump tariffs.

The Section 232 tariffs on aluminum and steel are subject to various ongoing appeals by



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other members of the World Trade Organization and by U.S. importers before the U.S. Court of International Trade.

A process established by the U.S. Department of Commerce to administer product exclusion applications has also drawn sharp criticism, including from that department's office of the inspector general.[2]

The Trump administration's broad use of Section 232 has also triggered congressional efforts to enact legislation that would limit the president's discretion under Section 232.

Presidential Proclamation 9980 represents a significant expansion of the underlying Section 232 action on aluminum and steel and is expected to impact a range of U.S. imports valued at roughly \$800 million during 2019. No public notice preceded the issuance of Presidential Proclamation 9980.

Presidential Proclamation 9980

According to Presidential Proclamation 9980, the secretary of commerce has informed the president that the capacity utilization of domestic producers of the aluminum and steel articles covered by Proclamations 9704 and 9705 has not stabilized at a level necessary to remove the threat to national security represented by imports of these articles.

The proclamation also explains that, according to the secretary of commerce, U.S. imports of various derivative articles of aluminum and steel have increased, thereby reducing demand for U.S.-made aluminum and steel, and circumventing the intended effect of the existing Section 232 tariffs.

On this basis, the proclamation orders the imposition of further Section 232 tariffs, at the same ad valorem rates, on a range of derivative articles of aluminum and steel. These are specified in Annexes I and II, respectively, to the proclamation.

Annex I describes certain stranded wire, cables, plaited bands and certain bumper and body stampings.

Annex II describes certain nails, tacks, drawing pins, corrugated nails and staples and certain bumper stampings and certain body stampings for tractors.

The proclamation also authorizes Commerce to establish a new product exclusion process that would apply to the derivative articles of aluminum and steel now subject to Section 232 tariffs.

Like the existing product exclusion application process administered by the Department of Commerce, the new process would be available only to U.S. persons seeking to establish that the articles for which exclusion is sought are not produced in the United States in a sufficient and reasonably available amount, or to a satisfactory level of quality.

Exclusion would also be authorized on grounds of national security.

As with the existing product exclusion process, exclusions would be retroactive to the date of Commerce's acceptance of the exclusion application. The proclamation does not specify a deadline for the establishment of the additional product exclusion process.

U.S. Customs and Border Protection Guidance for Importers

Additional details on the implementation of the tariffs on derivative articles of aluminum and steel, which took effect on Feb. 8, are provided in U.S. Customs and Border Protection Cargo Systems Messaging Service 41538803[3] as follows:

Derivative Aluminum Products

- Importers shall report the classification under heading 9903.85.03 for imported merchandise subject to the additional duty, in addition to the regular HTSUS Chapter 76 classification for the imported derivative merchandise.

- In addition, for aluminum stampings, new Harmonized Tariff Schedule of the United States, or HTSUS, classifications 8708.10.30.30 and 8708.29.21.30 became effective on Feb. 8.

- Heading 9903.85.03 will apply to the following derivative aluminum products:
 - 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;
 - 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;
 - 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;
 - 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;
 - Bumper stampings of aluminum, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705; and
 - Body stampings of aluminum, for tractors suitable for agricultural use.

Derivative Iron or Steel Products

Importers shall report heading 9903.80.03 for imported merchandise subject to the additional duty, in addition to the regular HTSUS Chapter 73 classification for the imported derivative merchandise.

- In addition, for steel stampings, new HTSUS classifications 8708.10.30.20 and 8708.29.21.20 became effective on Feb. 8.

Heading 9903.80.03 will apply to the following derivative iron or steel products:

- 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;
- 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;
- Bumper stampings of steel, the foregoing comprising parts and accessories of the motor vehicles of headings 8701 to 8705; and
- Body stampings of steel, for tractors suitable for agricultural use.

With regard to special duty treatment under the provisions of Chapter 98, CSMS 41538803 specifies that duties under subheading 9802.00.60 shall be assessed based upon the full value of the imported article, and that if body stampings of aluminum or steel for tractors suitable for agricultural use qualify under 9817.00.50 or 9817.00.60, the products are still subject to the additional Section 232 duties.

As with the previous Section 232 actions, drawback is not available for the Section 232 duties imposed on any aluminum or steel article. Further, U.S. Generalized System of Preferences and African Growth and Opportunity Act eligible goods that are subject to Section 232 duties or quotas may not receive GSP or AGOA duty preference in accordance with Title 19 of U.S. Code Section 2463(b)(2).

Further, covered articles admitted into a U.S. foreign trade zone on or after Feb. 8, will be subject upon entry for consumption to the applicable ad valorem rates described above, and will only be admitted as privileged foreign status.

Likewise, covered articles that were admitted into a U.S. foreign trade zone under privileged foreign status prior to Feb. 8, are subject to the applicable ad valorem rates described above upon entry for consumption. However, these duties do not apply to those articles eligible for domestic status.[4]

What Interested Parties Should Consider

Presidential Proclamation 9980 represents a significant further and controversial intensification of the Trump tariff policy, thereby also creating additional compliance risks for U.S. importers. Importers who underpay duties associated with covered steel and aluminum products risk fines, penalties and ancillary enforcement actions, and targeted audits by CBP.

U.S. importers should examine their supply chains to determine if their imports fall within the product scope defined in Annexes I and II of the proclamation, and if they do, should monitor further developments with respect to the expected product exclusion application process.

U.S. importers should also monitor the status of legal challenges to the expanded Section 232 action. Already, one importer, PrimeSource Building Products, has filed suit at the U.S. Court of International Trade, seeking an injunction to block imposition of the tariffs.

This lawsuit comes in addition to several other pending actions against the existing Section 232 tariffs and may ultimately alter the course of the administration's increasing reliance on Section 232 as a mechanism to restrain imports.

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[1] <https://www.govinfo.gov/content/pkg/FR-2020-01-29/pdf/2020-01806.pdf>; published in the Federal Register on Jan. 29, at Vol. 85, page 5281.

[2] <https://www.oig.doc.gov/OIGPublications/OIG-20-003-M.pdf>.

[3] [https://content.govdelivery.com/bulletins/gd/USDHSCBP-279d4f3?wgt_ref=USDHSCBP_WIDGET_2?utm_source=csms.cbp.gov&utm_medium=csms.cbp.gov&utm_term=undefined&utm_content=undefined&utm_campaign=\(not%20set\)&gclid=undefined&dclid=undefined&GAID=1016774988.1544196117](https://content.govdelivery.com/bulletins/gd/USDHSCBP-279d4f3?wgt_ref=USDHSCBP_WIDGET_2?utm_source=csms.cbp.gov&utm_medium=csms.cbp.gov&utm_term=undefined&utm_content=undefined&utm_campaign=(not%20set)&gclid=undefined&dclid=undefined&GAID=1016774988.1544196117).

[4] 19 C.F.R. § 146.43.