



**HUSCH BLACKWELL**

# Section 232 and Section 301 Tariffs and Retaliatory Actions

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# Why Are Section 232 & 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.

# 232 Tariffs Commerce Process



## Section 232 (19 USC 1862):

- Directs Commerce to submit a report to the president advising whether any article “is being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security.”

## DOCs Key Findings:

- Health of U.S. steel and aluminum industries is a matter of national security.
- U.S. is the world’s largest importer of steel. Imports are nearly four times exports.
- China is by far the largest producer and exporter of steel, and largest source of excess steel capacity. Their excess capacity alone exceeds total U.S. steel-making capacity. In a month, China produces nearly as much steel as the U.S. does in a year.
- As of February 15: U.S. had 169 antidumping and countervailing duty orders in place on steel. 29 against China with 25 ongoing investigations. 4 ongoing AD/CVD cases involving aluminum against China.

## Section 232 measures:

- Additional tariffs: 25% on certain steel products; 10% on certain aluminum products.
- Effective March 23, 2018. Assume to be in effect for the foreseeable future.
- Countries currently with exemptions include: Argentina, Australia, Brazil, Canada, Mexico, members of the EU, and South Korea. Exclusions may be granted for certain products.

# 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
- Exclusions may be granted for certain products.

# What's included

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



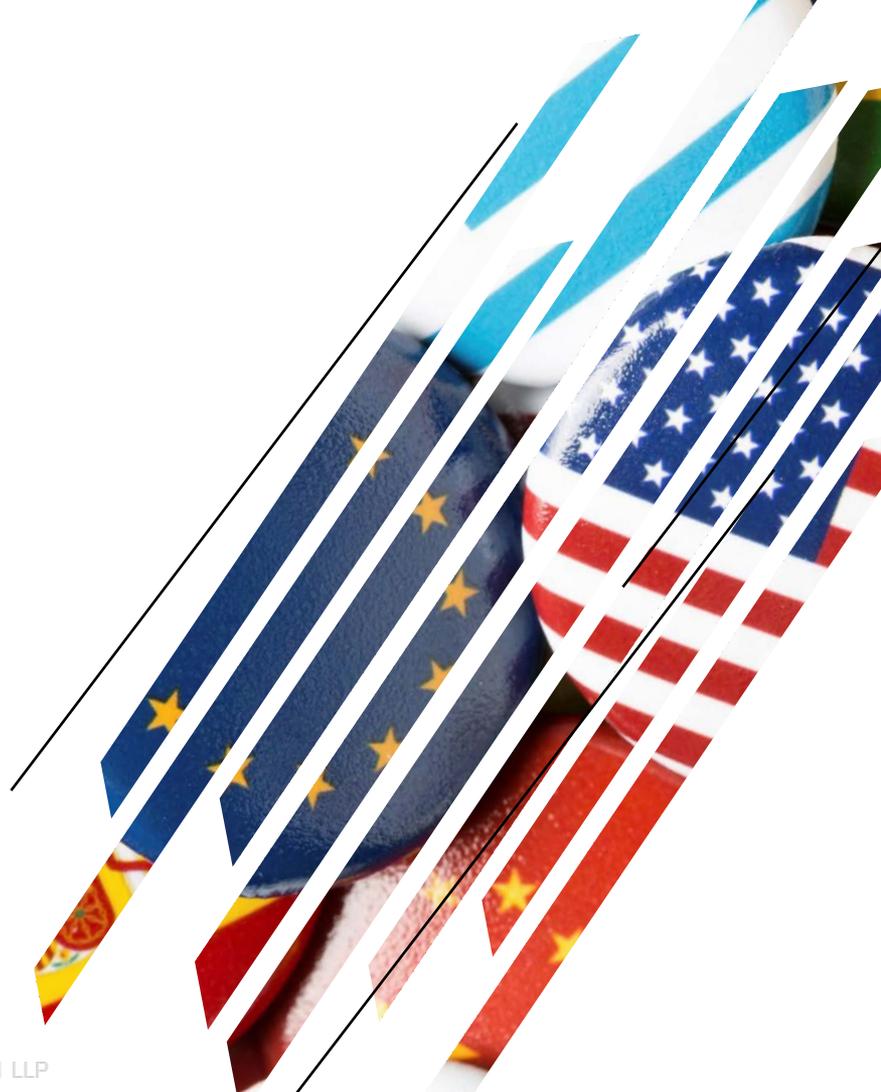
- 7206.10 through 7216.50 (including ingots, bars, rods and angles)
- 7216.99 through 7301.10 (including bars, rods, wire, ingots and sheet piling)
- 7302.10 (rails)
- 7302.40 through 7302.90 (including plates and sleepers)
- 7304.10 through 7306.90 (including tubes, pipes and hollow profiles)

## 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 301 Tariffs



# Section 301 of the Trade Act of 1974:

- Authorizes President to take all appropriate action to remove any act, policy, or practice of a foreign government that violates an international trade agreement or is unjustified, unreasonable, or discriminatory, and that burdens or restricts U.S. commerce.
- "The total value of imports subject to the tariff increase is commensurate with an economic analysis of the harm caused by China's unreasonable technology transfer policies to the U.S. economy, as covered by USTR's Section 301 investigation."
- Some of what is included: Technology Products, Transportation Items, Upstream Steel Products, Medical Devices, Weapons, Food Products, Chemicals, Plastics, Finished Goods, and Consumer Products.



# Section 301 Proceeding – Phase 1 Timeline

Instituted: Jul 6, 2018  
Duty Rate: 25%

**Aug 18, 2017:** USTR initiates investigation (82 FR 40213)  
• 70 comment submissions      • October 10 – public hearing

**Mar 22**  
President issues  
memorandum  
(83 FR 13099)

**May 15-17**  
Public hearing at the  
U.S. International  
Trade Commission

**Jun 15**  
Revised List Final  
and Published  
**Tariffs Effective  
Jul 6**

**Mar 23**  
USTR initiates  
WTO Dispute  
Settlement

**May 11/22**  
2,857 submissions  
filed in the  
proceeding

**Oct 9**  
Specific Exclusions  
Requested by Oct 9  
– if approved duties  
refunded retroactive  
to Jul 6

# Section 301 Proceeding – Phase 2 Timeline

Instituted: Aug 23, 2018  
Duty Rate: 25%

**Aug 18, 2017:** USTR initiates investigation (82 FR 40213)

- 70 comment submissions
- October 10 – public hearing

**Mar 23**  
USTR initiates  
WTO Dispute  
Settlement

**Jul 23**  
Pre-hearing  
comments  
due

**Jul 24**  
Public hearing at  
U.S. International  
Trade Commission

**Aug 10**  
Revised List Final  
and Published  
**Tariffs Effective  
Aug 23**

**Jun 15**  
President issues  
memorandum  
(83 FR 28,710)

**July 31**  
Post-hearing  
comments  
due

**Dec 13**  
Specific Exclusions  
Requested by Dec 13  
– if approved duties  
refunded retroactive  
to Aug 23

# Section 301 Proceeding – Phase 3 Timeline

Instituted: **Sep 23, 2018**  
Duty Rate: **10% until Jan 1, 2019**

**Aug 18, 2017:** USTR initiates investigation (82 FR 40213)  
• 70 comment submissions      • October 10 – public hearing

**Mar 23**  
USTR initiates  
WTO Dispute  
Settlement

**Aug 20-23**  
Public hearing at  
U.S. International  
Trade Commission

**Sep 17**  
Revised List Final  
and Published  
**Tariffs Effective**  
**Sep 24**

**Jun 15**  
President issues  
memorandum  
(83 FR 28,710)

**Sep 6**  
All written  
comments  
due

**???**  
**No product  
exclusion process  
announced to date.**



# What Should U.S. Companies Do in the Current Trade Climate?

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Following President Trump's announcement of steel and aluminum tariffs on several U.S. allies in March 2018, several countries in the EU, Mexico, and Canada responded with retaliatory tariffs on U.S. products.

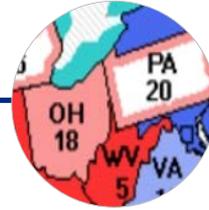
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Other U.S. trade partners and allies have stated plans to retaliate and seek remedies through the North American Free Trade Agreement (NAFTA) (now USMCA) and the World Trade Organization (WTO).

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With widespread business impacts of these retaliatory actions looming, companies should closely review supply chains to determine considerations for risk management.

# President Trump's Stance on Trade



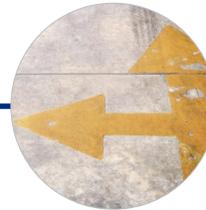
## President Trump's base:

Steel industry states key to Trump's electoral college victory: Pennsylvania and Ohio



## Bilateral trade focus:

Deficits are bad and "unfair." Little attention to services.



## Highly transactional:

Willing to bend policies, rules and laws to get a "deal".

**President Trump is giving directions to the bus driver...**

# Trump's Trade Team

...but who is driving the bus and why the focus on steel?

## Robert Lighthizer

U.S. Trade  
Representative:

Former Deputy USTR under President Reagan. Over 40 years experience representing the domestic steel industry. The U.S. "should consider aggressive interpretations of WTO provisions that might help us deal with Chinese mercantilism."

## Wilbur Ross

Secretary of Commerce:

In 2002, founded International Steel Group after purchasing the assets of bankrupt steel companies. Ross had support from the local steelworkers union, negotiating a deal with them to "save" Pennsylvania's steel industry.

## Peter Navarro

Assistant to the President,  
Director of Trade and Industrial  
Policy and Director, White  
House National Trade Council

"Navarro's views are significantly outside the mainstream of economic thought ..." Author, *Death by China: Confronting the Dragon – A Global Call to Action*. Worked with Wilbur Ross to set trade policy for candidate Trump.

## Reuters

December 9, 2016

President-elect Donald Trump is stacking his trade transition team with veterans of the U.S. steel industry's battles with China ... a potentially more aggressive approach to U.S. complaints of unfair Chinese subsidies for its exports and barriers to imports.



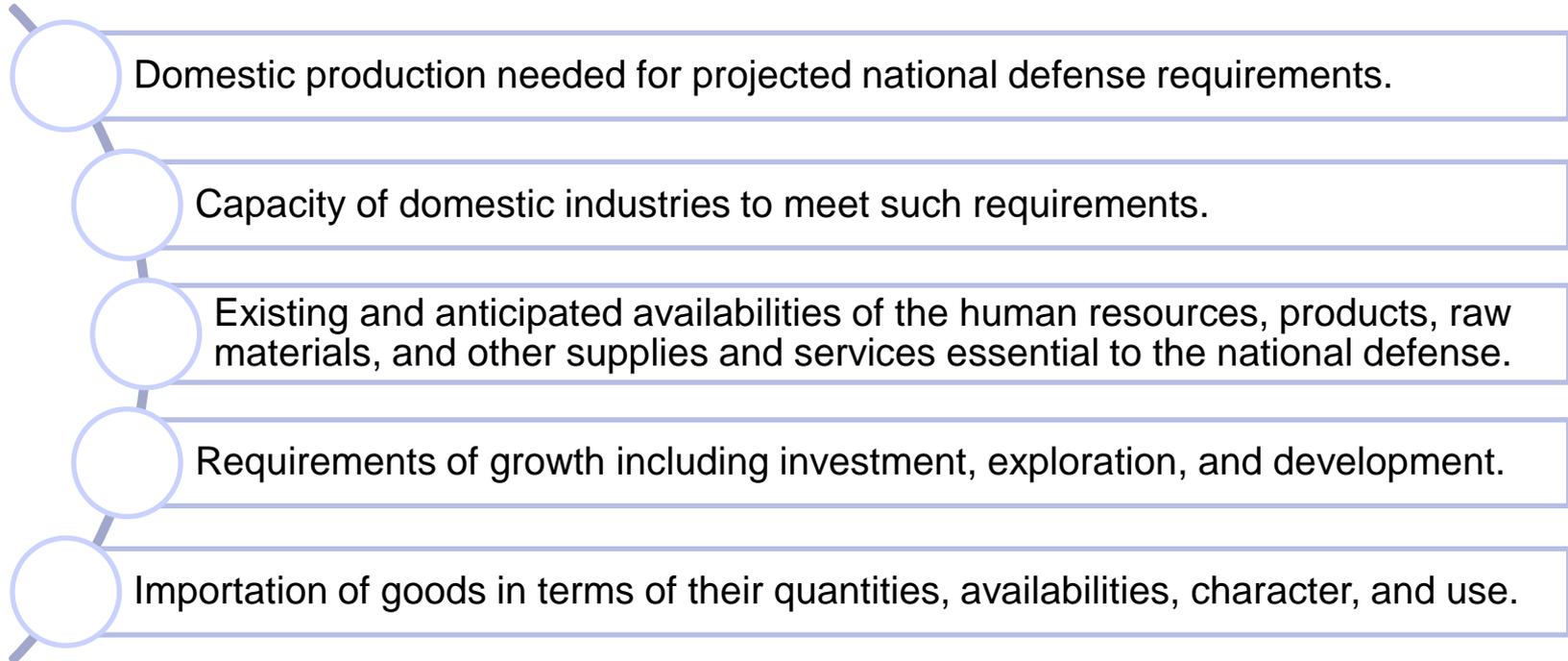
Are the steel and  
aluminum tariffs  
legal?

# Under U.S. law: Section 232 of the Trade Expansion Act of 1962 (19 USC 1862)

- The Secretary of Commerce initiates “an appropriate investigation to determine the effects on the national security of imports of the article which is the subject of such request, application, or motion.
- Coordinates with the Secretary of Defense concerning “defense requirements” and conducts the investigation.
- Whether the article is being imported “in such quantities or under such circumstances as to threaten to impair the national security” and if so, “advise the President.”
- If the President concurs then he is authorized to **“determine the nature and duration of action that, in his judgment ... must be taken to adjust imports of the article and its derivatives so that such imports will not threaten to impair the national security.”**

**What else?**

# Some factors the national security investigation is directed to consider:

- 
- Domestic production needed for projected national defense requirements.
  - Capacity of domestic industries to meet such requirements.
  - Existing and anticipated availabilities of the human resources, products, raw materials, and other supplies and services essential to the national defense.
  - Requirements of growth including investment, exploration, and development.
  - Importation of goods in terms of their quantities, availabilities, character, and use.

# *American Institute for International Steel, Inc. v. U.S.*

Filed with the Court of Int'l Trade June 27, 2018.

## **Alleges the Sec. 232 tariffs are unconstitutional:**

- Art. I, Sec. 8: “The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises” and “To regulate Commerce with foreign Nations...”
- Complaint alleges that Sec. 232 grants the President such unlimited powers in the name of “national security” that it violates Article I, Sec. 8.
- Alleges Sec. 232 lacks procedural protections and lacks “an intelligible principle to guide decisions of the President.”

## **What are the chances of success?**

- As for the President’s powers related to national security: The current Supreme Court just upheld the travel ban and that court is going to become even more conservative.
- The statute identifies a number of different factors to be taken into consideration.
- As demonstrated by the petroleum “disapproval resolution” provision, Congress can reassert its authority at any time.
- The statute has been used more than 15 times since 1979.

**Status: Oral argument is scheduled for December 19, 2018.**

# Pending Decisions



## **We do not see Section 232 being rejected in court.**

- The statute: Has principles, a process and (albeit very wide) limitations.
- As applied: Little chance of plaintiff's winning even at a lower court. Would certainly be appealed to the CAFC and if necessary, the Supreme Court. A long history of the President applying tariffs and quotas.



## **We do not see the U.S. accepting a WTO decision rejecting Section 232.**

- WTO decision not likely until (at the earliest) sometime around the next presidential election. Possibly much later.
- Trump would be more than happy to tweet about “unfair” foreign organizations biased against America and harming American workers.
- Democrats might not be much better. The Bernie Sanders part of the Democrat party is not in favor of free trade.
- Would become a “sovereignty” issue.
- Under the Article XXI Security Exceptions the U.S. has a leg to stand on.

## Bottom line:

Under U.S. law Section 232 is legal and has been employed numerous times, but usually has not led to a negative outcome for imports.

Congress can (and has) limited the President's powers under Sec. 232. However, the President has wide discretion.

No timeline for expiration and sanctions can easily be renewed.





# What Could Affect the 232 Tariffs Going Forward?

# What Could Affect the 232 Tariffs Going Forward . . .

- Argentina, Australia, Brazil, and South Korea struck deals with the administration to avoid some or all of the duties.
- South Korea, Brazil, and Argentina are exempt from steel tariffs and agreed to meeting quotas.
- All countries are subject to the aluminum tariff except for Argentina who agreed to meet a quota.
- The only country to be exempted from both the steel and aluminum tariffs is Australia.
- All other countries are faced with the Section 232 tariffs.

The European Union, China, India, Canada, Mexico, and Norway have filed in the WTO and are in consultations with the United States.

Russia has also filed, but is apparently not yet in consultations.

# Politics & Retaliation

## ➡ Mid-Term Elections:

- What happens in key steel and aluminum states: Pennsylvania and Ohio.
- Appeals to a populist sentiment that is part of Trump's base.
- Republicans lost control of the House but kept control in the Senate

## ➡ Retaliatory tariffs:

- Are they timed to the mid-term elections and Presidential 2020 election.
- Who gets hurt (Harley-Davidson, Kentucky Bourbon, Midwest agricultural interests).

## ➡ Congress:

- Several Republican senators are planning on hearings.
- Congress could modify the statute, take action limiting particular sanctions or take other actions troublesome to the Administration.



# Economics

## ➡ The Economy at large:

- Currently strong, but if unemployment rises, GDP falls, etc.

## ➡ Jobs:

- Through lost foreign sales.
- Through higher raw materials forcing U.S. producers to charge higher prices.
- Mid-Continent Nail Corp. (Poplar Bluff, Missouri): Mid-Continent was the plaintiff in a series of antidumping cases on steel nails. As reported on CBS, “President Donald Trump has vowed to bring back American jobs, but three months since making his first move to impose tariffs on foreign steel and aluminum, his trade policies have cost 60 employees their positions at the country's largest nail manufacturing plant. \*\*\* And it’s all because of the tariffs.” The company “would like Trump to grant the company exclusions from the steel import tariffs — in which case Mid-Continent would be able to re-employ the 60 workers laid off. If not, the other 500 workers’ jobs are at stake.”

# Harley-Davidson, Inc. and BMW



**Milwaukee, Wisconsin**

Due to retaliatory tariffs from the EU, Harley-Davidson announced plans to move some of its production overseas in order to avoid further harm to the business from tariffs. Harley-Davidson released a statement saying, "Increasing international

production to alleviate the EU tariff burden is not the company preference, but represents the only sustainable option." The EU's tariff on motorcycles was raised from 6% to 31%, resulting in motorcycles being about \$2,200 more expensive to export for Harley-Davidson. It was estimated that Harley-Davidson will lose \$30 million to \$45 million by the end of this year and roughly \$90 million to \$100 million annually. The motorcycle company has international plants in Brazil and India, and is looking to open one in Thailand.



**Greer, South Carolina**

In Greer, SC, BMW builds the X3 and X5 SUV's that are widely popular in China, however because of the retaliatory tariffs production at the plant has slowed down. The majority of the vehicles

that leave the Port of Charleston are BMWs, however in the month of August 2018 alone there was a 35% drop in exports of automobiles in comparison to automobile exports in August 2017. In a statement from BMW's CFO, Nicolas Peter, the trade war between the U.S. and China will cost the car company an estimated loss of \$347 million in just the second half of 2018.

# Other Global Concerns

## ➡ Trade War:

Do the Section 232 tariffs and retaliatory tariffs stop after one round or do they spiral into a larger and more difficult trade war?

## ➡ China gets tough:

- **Politically** : North Korea, etc.
- **Economically**: As reported on CNN: China hasn't ruled out using its status as America's biggest foreign creditor as leverage in the fight over trade. But Steven Mnuchin isn't concerned. "Plenty of people can buy our Treasuries," the U.S. Treasury secretary said .... In March, the Chinese ambassador to the United States kept open the option of scaling back purchases of U.S. debt in the event of a trade war. \*\*\* China is the largest foreign U.S. bond holder with \$1.18 trillion in holdings.





## Options for Avoiding Section 232 Duties

# 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

## Section 301 Exclusion Requests:

Product Specific Exclusions with Proof of no IP Violations

Product exclusions: handled by USTR

Prove Product Not on China 2025 List

Insufficient U.S. supply and can source only from China

Additional duties cause severe economic harm

**Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports**

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

Exclusion Request Requirements: Only individuals or organizations operating in the United States that use steel products (e.g. flat, long, semi-finished, pipe and tube, and stainless) in business activities (e.g., construction, manufacturing, supplying steel product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of steel product it requires using a 10-digit HTSUS code, including its specific dimensions; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the steel product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.

**A separate Exclusion Request must be submitted on each distinct type and dimension of steel product to be imported.** All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.

Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.

Organizations should upload their completed Exclusion Request pertaining to a steel product to [www.regulations.gov](http://www.regulations.gov) under Docket Number BIS-2018-0006. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on [www.regulations.gov](http://www.regulations.gov). For questions related directly to completing this form, contact BIS via email ([steel232@bis.doc.gov](mailto:steel232@bis.doc.gov)) or telephone (202-482-5842).

2.a Average annual consumption for years 2015-2017 of the steel product that is subject of this Exclusion Request - Kilograms

2.b Explain why your organization requires an Exclusion using 1) the drop-down box to the right and 2) by providing written comments in the space provided below.  
 Comments: \_\_\_\_\_

2.c Identify the percentage of total steel product covered under this Exclusion Request not available from steel manufacturers in the United States:

2.d Estimate the number of days required to take delivery of the steel product covered by this Exclusion Request, from the time the purchase order is issued by your organization:

2.e Estimate the number of days required to manufacture the steel product covered by this Exclusion Request, from the time a binding purchase order is executed:

2.f Estimate the number of days required to ship the steel product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:

2.g Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the steel product subject to this Exclusion Request:

Identify the U.S. Destination Port(s) of Entry through which the steel product subject to this Exclusion Request would be transported:

2.h	Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7

Is the organization making this Exclusion Request doing so on behalf of a non-U.S. steel producer that does not manufacture steel products in the United States?

2) If "Yes" Identify the non-U.S. steel producer \_\_\_\_\_ Identify the country where the organization is headquartered \_\_\_\_\_

Comments: \_\_\_\_\_

1.a Identify the class of steel product for which the Exclusion is sought: \_\_\_\_\_

10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single steel product covered by this request: <http://www.ecommerce.gov/hs/nomenclature/hs2012/10-digit.html>

Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion	
Full Organization Legal Name	_____	Full Organization Legal Name	_____
Street Address	_____	Street Address	_____
City	_____	City	_____
State	_____	State	_____
Zip Code	_____	Zip Code	_____
Headquarters Country	_____	Headquarters Country	_____
Point of Contact Name	_____	Point of Contact - Representative Name	_____
Phone Number	_____	Phone Number	_____
E-mail Address	_____	E-mail Address	_____
Web Site Address	_____	Web Site Address	_____
Parent Company of Requesting Organization		Requester's Authorized Representative/Agent (if applicable)	
Full Organization Legal Name	_____	Requester Point of Contact Name	_____
Street Address	_____	Point-of-Contact Organization	_____
City	_____	Country Location	_____
State/Province	_____	Phone Number	_____
Zip Code/Postal Code	_____	E-mail Address	_____
Headquarters Country	_____	Web Site Address	_____
Web Site Address	_____	Other Information	_____

1.b E-mail Address \_\_\_\_\_  
 Web Site Address \_\_\_\_\_

1.c Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Steel Manufacturer; Steel Distributor; Steel Exporter or, Steel Importer? If "Yes" identify the activity. \_\_\_\_\_

If "Yes" - Identify the organization \_\_\_\_\_

Identify the country where the organization is headquartered \_\_\_\_\_

Comments: \_\_\_\_\_

**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) \*With regard to the product for which an Exclusion is requested, such a description must be limited 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. Flanges (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%," 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: \_\_\_\_\_

1	Organization	Designation	3	Organization	Designation	5	Organization	Designation
	2							6
Other (specify)			Other (specify)			Other (specify)		

2.k Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s). (e.g., ASTM A108-12)

Identify the classification and properties of the steel product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)

Slab	Bloom	Billet	Ingot	Flat	Long	Beam	Semi-Finished	Pipe	Tube	Stainless	Wire	Hot Rolled	Cold Rolled
2.l													
Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)

Comment: \_\_\_\_\_

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

**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.

List the Commercial Name(s) of the single steel product that is the subject of this Exclusion Request.

Chemical Composition													
Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Manganese	Molybdenum	Nickel
Minimum %													
Maximum %													
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tellurium	Titanium	Tungsten	Vanadium	Zirconium	[Other - List Below]	[Other - List Below]
Minimum %													
Maximum %													
Comments:													

4.a			
Comments:			

Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) dimensional information for the single steel product and a single size -- not a range of products and/or sizes (e.g., 18 mm dia. rebar - not 18, 22, 25, and 28 mm.) A separate Exclusion Request must be submitted for each steel product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear, and test temperature.

State the 1) application for the steel product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar steel products manufactured in the United States, if available, are not suitable.

	Steel Product Specifications (Millimeters)						Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength (MPa)	Yield Strength (MPa)	Hardness (specify method below - Brinell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Test Testing	Impact (Charpy) Testing	Other (specify type in comment box)
Minimum										Temperature (°C)			
Maximum											% Shear		
Comments:													

If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single steel product in the space below.

Identify the source countries for the single steel product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the steel product. If this steel product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin.

NOTE: Steel products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.

4.d	Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer (if not obtained directly from manufacturer)
1				
2				
3				
4				
5				

Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness.

**Product Availability Information**

4.e Does the Requester possess knowledge of any domestic U.S. parties that currently manufacture the described steel product in the United States?

Comment: \_\_\_\_\_

	Global Ductility		Local Ductility (If Applicable)		Magnetic Permeability (If Applicable)			Surface Finish		Coating Type and Composition (If Applicable)				
	Elongation %	Reduction in Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness) (millimeter)	Magnetic Permeability (Epoxy Test)	Magnetic Permeability (Greer Lab Method)	Stacked Vide Sheet (ASTM A3044 ASQ4M-04 [2015])	Profilometer (SAE J311)	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg; other intentionally added elements or alloys)	Weight (Gram per Sq. Meter)	Coating Thickness (micrometers)	
Minimum														
Maximum														
Comments:												Other (specify)		

4.f Does the Requester possess knowledge of any parties that currently manufacture the described steel product in a country exempted from this tariff? If yes, identify the country or countries below.

Comment: \_\_\_\_\_

4.g Is the Requester aware of any manufacturers capable of producing a substitute for the steel product in the United States? If "Yes" provide supporting information (name and address) in the space below?

Comment: \_\_\_\_\_

4.h Has the Exclusion Requester attempted to qualify any steel manufacturer in the United States as a supplier of the steel product that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages.

1		5
2		6
3		7
4		8

Comment: \_\_\_\_\_

*Continued on Next Page*

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Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - <i>Continued</i>	
5.a	Has the Exclusion Requester <b>attempted to purchase the described steel product</b> that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. steel manufacturing organizations in the space below. Comment: <input type="text"/>
5.b	Has the Exclusion Requester <b>had supply contracts, or does it have current contracts</b> , with steel producers that manufacture in the United States the steel product identified in the Exclusion Request? If "Yes" identify the U.S. steel manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below.
5.c	Has the Exclusion Requester <b>determined that there is no U.S. manufacturer</b> that produces a near-equivalent steel product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc). Comment: <input type="text"/>
5.d	In the last two years, has the Requester purchased a <b>substitute steel product</b> manufactured 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: <input type="text"/>
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the steel product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures. <input type="text"/>
Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to <a href="http://www.regulations.gov">www.regulations.gov</a> under Docket Number BIS-2018-0006 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the Requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.	
<b>Submission of Supporting Documents (Attachments):</b> Supporting attachments should be submitted to <a href="http://www.regulations.gov">www.regulations.gov</a> as PDF documents and must be posted to <a href="http://www.regulations.gov">www.regulations.gov</a> under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.	
Other Comments: <input type="text"/>	
I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission: <input type="text"/>	

<b>Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.</b>	
<b>CERTIFICATION</b>	
The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her 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 (1984 & SUPP. 1197)]	
Company Name:	<input type="text"/>
Name of Authorizing Official:	Title of Authorizing Official: <input type="text"/>
Phone Number: <input type="text"/>	Email of Authorizing Official: <input type="text"/>
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.	
Point-of-Contact Name:	Title: <input type="text"/>
Email Address: <input type="text"/>	Phone Number: <input type="text"/>
<b>Paperwork Reduction Act Notice</b>	
For the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, N.W., HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond, unless this OMB number is displayed.	



# Retaliation

# Retaliatory Actions Against Trump's Tariffs

- *New York Times* (March 2, 2018):  
**Peter Navarro:** believes no country will retaliate “for the simple reason that we are the most lucrative and biggest market in the world.”
- U.S. imposes 232 tariffs on steel and aluminum, June 1, 2018.
- **AND** the following countries take retaliation actions:

**Canada:**  
\$12.8 B



**China:**  
\$2.5 B



**EU:**  
\$7.1 B



**India:**  
\$241 M



**Japan:**  
Pending  
Negotiation



**Mexico:**  
\$2.9 B



**Turkey:**  
\$267 M



**Russia:**  
\$3.16B



# China's Backlash – Trade War Brewing?

- China announced a retaliatory 25 percent tariff on 106 products imported from the United States:

Soybeans (yellow and black)	Corn and corn flour	Cotton and certain cotton products	Wheat, wheat products and by-products	Beef
Cranberries	Orange Juice	Whiskey	Tobacco, tobacco products and accessories (including cigarettes)	Certain off-road vehicles

- President Trump cited China's 'unfair retaliation' as a reason for additional potential tariffs of up to \$100 Billion in Chinese imports.

**Bilateral negotiations are continuing...**

# Retaliation by U.S. Trading Partners

What's the impact?

Most countries add VATs to landed, duty paid values:

## Example 1

- \$100 good to Canada
- Landed, duty paid = \$125
- W/GST --  $\$125 \times 1.05 = \$131.25$

## Example 2

- \$100 good to France
- Landed, duty paid = \$125
- W/VAT --  $\$125 \times 1.20 = \$150$

China recently announced a reduction in VAT to offset additional tariffs.

# Canada

- The Canadian government received over 1,000 submissions of public feedback during public consultations on its original list. Canada imposed countermeasures against the U.S. worth up to \$16.6 (Canadian dollars) billion.
- Items hit particularly hard by these tariffs were steel and aluminum products. This list comes after the U.S. imposed tariffs on Canada on May 31, 2018.
- Even with the new trilateral trade agreement between Canada, Mexico, and the U.S., the issue of the 25% tariff on steel and aluminum products imported from Canada still remains in effect.
- Canada responded with 3 tables of tariffed U.S. goods that ranged from 10%-25% that went into effect on 7/1/2018:
  - Table 1 – 10%
  - Table 2 – 10%
  - Table 3 – 25%



# China

China and the U.S. are in the midst of a massive trade war. With multiple lists of tariffed products culminating in billions of dollars being collected, neither side has let up the pressure.

The first major exchange between the two was China's response to the U.S. Section 232 tariffs on steel and aluminum imports. China's Ministry of Commerce notified the WTO it would place tariffs on 128 U.S. goods. Products include fruits, vegetables, alcohol, steel tubes and steel pipes.

- 4/3/2018: China releases one annex, Annex 1 (5%-25%)
- 7/6/2018: Product List 1: 545 tariff lines worth \$34 billion (25%)
- 8/23/2018: Product List 2: 333 tariff lines worth \$16 billion (25%)
- 9/24/2018: Product List 3: 5,207 tariff lines worth \$60 billion, plus Annex 1 and 2 (10%) and Annex 3 and 4 (5%)



# European Union (EU)

In response to the placement of tariffs on steel, aluminum, and a variety of other products, the EU released a statement that they felt it was necessary in order to rebalance bilateral trade with the U.S.

The EU placed tariffs on U.S. goods worth up to \$7.2 billion. Men and women's clothing are among products affected by the 50% tariff.

- 5/18/2018: Annex 1 (10 or 25%)
- 7/2/2018: Annex 2 (10 - 50%)



# India

- Since President Trump has taken office, trade relations between the U.S. and India have been unsteady. Due to U.S. refusal to exempt India from its 232 tariffs and a declined request for WTO consultations, the Indian government quickly responded on 6/21/2018 with tariffs of their own.
- Affected products include produce, particularly nuts, apples, and cocoa. India also placed high tariffs on automobiles and motorcycles.
- With ongoing negotiations between the two countries, India has decided to implement retaliatory tariffs November 2, 2018.
- Annex 1: 5%-100% duty rate on U.S. goods



# Japan

As of now, Japan has placed tariffs on U.S. products totaling \$1.91 billion.

President Trump has threatened to impose a 25% tariff on imports of automobiles from Japan.

Key product industry segments that have been the topic of trade negotiations are agriculture and automotive.

Japanese Prime Minister Shinzo Abe met with President Trump on 9/26/2018 to initiate bilateral trade relations. There has not been a deadline set yet for the next meeting.



# Mexico

Mexico has put into place a two part retaliatory tariff response culminating up to \$3 billion worth of U.S. products.

The first list took effect on June 5, 2018 ranging in duties from 7% to 25%, with a secondary list taking effect on July 5, 2018 with duties ranging from 10%-15%.

Many of these products pertain to exports such as pork, alcohol, and dairy products. Mexico has also taken aim at U.S. steel products by placing a higher duty rate percentage on them.

Specifically, a 25% rate on 40 steel products. Despite the new trilateral agreement between the U.S., Mexico, and Canada the 25% tariff on steel and 10% tariff on aluminum is still in effect.



# Russia

The U.S. placed tariffs (25% and 10%) on Russia steel and aluminum products. The Russian Federation filed for a consultation with the U.S. at the WTO in order to negotiate a possible solution. With no substantial result from the first round of meetings, Russia introduced tariffs on U.S. goods ranging from 25%-40%.

Affected products include road construction equipment, oil and gas equipment, and metal processing instruments. As of now Russia has tariffs up to \$3.16 billion on U.S. goods.

There has yet to be a set date when Russia's retaliatory tariffs will come into effect...



# Turkey

In response to the U.S. doubling the tariffs on steel, the Government of Turkey “reserved its right to further suspend substantially equivalent concessions.”

In addition to this initial suspension, Turkey has up to \$1.78 billion worth of tariffs on a single Annex ranging from 5 - 40%.

Items affected by particularly high duty rates include alcohol, motor vehicles, and iron and steel structures used for buildings. On August 13, 2018, Turkey’s steel products were subjected to a 50% duty rate imposed by the U.S.



# Survival Toolkit: Rules of Origin

- Most foreign retaliation is against U.S.-origin goods only.
- What rule of origin is used?
- Mexico and Canada will use “NAFTA Marking Rules” (tariff-shift based) or NAFTA Preference Rules.
- Some countries have special rules of origin for textiles, apparel, etc.
- Do you gain advantage/disadvantage by making a preference claim?
- Can you change origin of good by re-sourcing components?
- Can you change origin of good by relocating some operations?



# Exceptions/Relief from Retaliatory Assessments

Do foreign regimes provide exceptions from retaliatory tariffs?

e.g., goods exported to U.S. for repair which are then returned

Do foreign regimes have product exemption procedures like the U.S.?

Are drawback and duty relief programs available for retaliatory tariffs/surcharges?

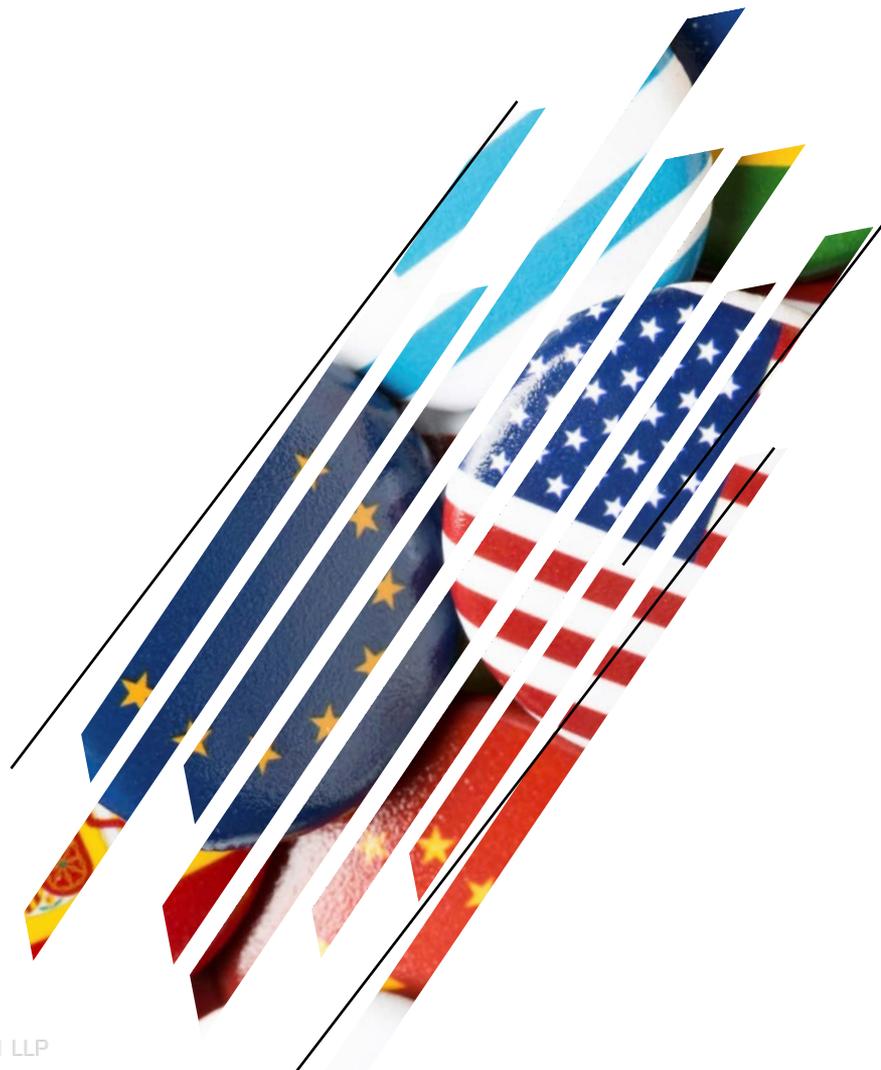
# Exceptions/Relief from Retaliatory Assessments

Does the U.S. product qualify for inward/outward processing schemes that provide for duty deferral?

Will the U.S. product subsequently be exported, in same condition or as part of a manufactured product?

Companies can work with their customers on allocating/sharing drawbacks or duty relief measures.

# What Do Business Do to Survive



# What Businesses Should Do To Survive Uncertainty

## Be Prepared for Increased Enforcement:

### **E-Allegations:**

Permits a party to make an allegation against an importer anonymously and online for any violation for tariff shifts, country of origin, valuation, etc.

### **The Enforce and Protect Act of 2015 (EAPA):**

Signed into law in 2016. Customs has started using the statute to investigate claims that importers are evading antidumping duties. Intent is not required for a violation. Parties found guilty of evasion are referred to the CBP Fines, Penalties & Forfeitures Branch for a penalty investigation. EAPA allegations can be filed through e-Allegations.

### **False Claims Act :**

A provision whereby any party can provide the government with information that a party is making a false claim and depriving the government of revenue. This applies to tariff misclassification, country of origin classification, tariff modifications, etc.

### **Customs Valuation and Duty Mitigation:**

Customs will focus closely on valuation of goods at the time of entry. Be prepared to document each component value for all valuation methods.

# Bonded Warehouse

- Building or other secured area in which imported dutiable merchandise may be stored.
- Liabilities for duties is canceled when the merchandise is exported.
- Bonded warehouses are viable options for companies who are seeking product exclusions pending a decision by Commerce or USTR.
- If the exclusion is granted then the goods can be entered for consumption without payment of duty.
- If the exclusion is denied then the goods can be exported without incurring additional duties.



# Confirm Tariff Classification

- Have legal counsel review product classification
- Study ruling decisions issued by CBP:

**Request  
Binding Ruling  
from CBP**

- Changing classifications can trigger historical liability for prior imports if using an incorrect HTS:

**Obtain Expert  
Advice**

- If errors occur:

**File Protests**

# Changing Country of Origin



# Risks for Companies Producing Chinese Inputs

- Both U.S. industries and the U.S. government are well aware of schemes involving changes in country of origin and/or the tariff headings in a country outside China.
- Purely transshipping goods and changing the labels to a new country of origin is likely to be considered a criminal act and exporters and importers may be subject to prosecution.
- For companies actually producing products outside China using Chinese inputs, there also are major risks that need to be avoided.



# Country of Origin and Substantial Transformation

## **Substantial Transformation** (generally):

Work or production which results in the creation of a new and different article of commerce, with a “name, character and use” different from those of its components.

- U.S. Customs and Border Protection (CBP) has made clear that it will apply the “substantial transformation” test to goods having Chinese inputs that otherwise would be covered by the section 301 tariffs.
- The determination of whether a substantial transformation has occurred is specific to the facts of the product, the company, and industry and necessitates reviewing rulings of CBP, court cases, and the specific detailed facts of the individual situation.



# What Substantial Transformation is *NOT*

1. The fact that a foreign country (Vietnam, Thailand, etc.) declares a product's country of origin as their country is irrelevant to CBP. CBP makes its own determination.
2. The fact that a product has undergone sufficient changes to meet the country of origin requirements of a free trade agreement (e.g., a product is considered a product of Mexico under the U.S.-Mexico-Canada Agreement) does not mean that a substantial transformation has occurred. Substantial transformation still must be analyzed separately on a case-by-case basis.

# Penalties for False Country of Origin Statements

## Fraud

- from a minimum of 5 times to a maximum of 8 times the total duty loss, or 50% to 80% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise;

## Gross Negligence

- from a minimum of 2.5 times to a maximum of 4 times the total duty loss, or 25% to 40% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise; or

## Negligence

- from a minimum of 0.5 times to a maximum of 2 times the total duty loss or 5% to 20% of the dutiable value in non-revenue loss cases, but never to exceed the domestic value of the merchandise.

# Penalties for False Country of Origin

## Aiding

- For aiding in falsifying country of origin, an exporter may be charged, along with anyone else involved in a scheme. The importer can also be held liable.

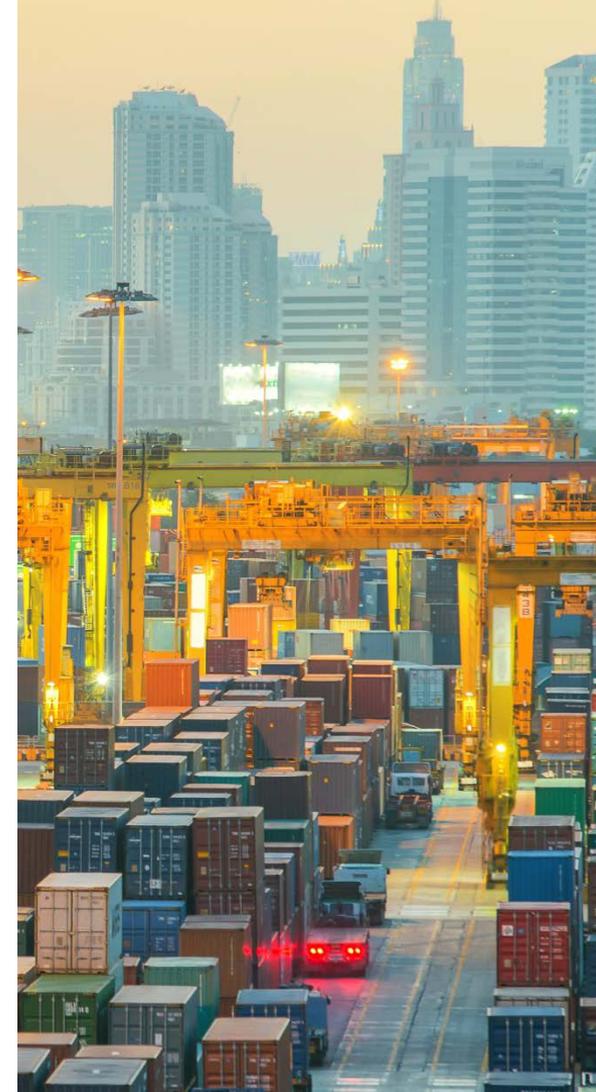
## Criminal Penalties

- For intentional acts to falsify country of origin or intentional misclassifications of merchandise.

We expect CBP and the Justice Department to put priorities on enforcing these penalties and both importers and exporters need to work to ensure that they avoid any penalties.

# Foreign Trade Zones

- Foreign Trade Zones are secure areas located in or near CBP ports of entry.
- Foreign and domestic merchandise may be moved into zones for operations such as storage, exhibition, assembly, manufacturing and processing.
- Goods subject to Section 301 Duties admitted into FTZs on or after the date on which the duties were imposed may only be admitted as “privileged foreign status”.
- Such products will be subject upon entry for consumption to any ad valorem rates of duties or quantitative limits.
- Only way to avoid duties for goods entered into an FTZ is to export the product from the FTZ.
- Companies may wish to establish a new FTZ or use an existing FTZ if they are exporting goods made from Chinese inputs subject to the Section 301 Duties.



# Temporary Import Under Bond

TIB is a program administered by CBP.

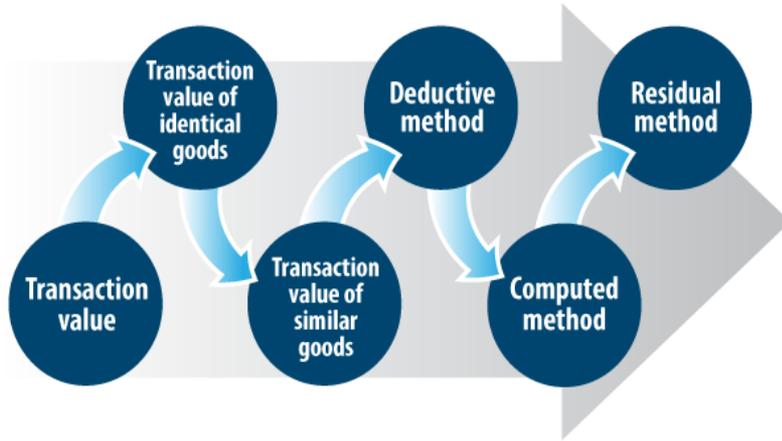
Under certain conditions merchandise may be temporarily entered into the U.S. free of duties, taxes, and fees.

Instead of paying duties the importer posts a bond for twice the amount of duty, taxes, and fees.

Under a TIB – the importer must export or destroy the imported goods within a specified period of time.

# Survival Toolkit: Customs Valuation

## METHODS OF DETERMINING VALUE FOR DUTY



## Critical examination of Customs values in destination country:

- Correct basis of appraisement?
- Are non-dutiable charges (e.g., buying commissions, royalties, license fees, advertising allowances) bundled into the “price paid or payable”?
- Can these values be unbundled?
- Is “first sale” appraisement available?

# What Businesses Should Do . . .

## First Sale Customs Valuation: Lowering Landed Cost of Goods

### What is it?

Permits an importer to apply duty to the price paid at the very first sale of goods rather than the final price paid by the importer.

### Requirements for “First Sale Valuation”

Middleman serves as buyer in the first sale and seller in the subsequent sale of goods.

Goods clearly destined for export to the U.S.

Foreign manufacturer/seller and middleman/buyer are unrelated or if related, conduct their transactions at “arm’s length”.

# What Businesses Should Do . . .

## First Sale Customs Valuation: Lowering Landed Cost of Goods

### Documentation is Required

- Purchase Orders for all steps of the transaction
- Invoices for all steps of the transaction
- Payments from manufacturer to middleman and middleman to importer
- All costs declared
- First sale documents must be error free
- Second sale documents must reconcile to first sale documents
- Customs normally will attempt to verify the paper trail and not immediately accept a claim of first sale valuation
- Volume based option for large exporters and importers

# What Businesses Should Do . . .

## **First Sale Customs Valuation: Lowering Landed Cost of Goods**

### **Benefits of Successful First Sale Valuation**

Assume a duty rate of 25%

**Vendor to Importer Invoice:** \$15,000 = Duty Payment of \$3,750

**Manufacturer to Vendor Invoice:** \$14,000 = Duty Payment of \$3,500

**Savings = \$250**

# What Businesses Should Do

## Be aware of increased unfair trade actions:

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The U.S. Government can initiate unfair trade actions, but historically most cases are brought by private parties:

---

U.S. antidumping law

---

U.S. countervailing duty law

---

Section 337 of the Tariff Act of 1930, as amended (dealing with other unfair trade practices not covered by AD or CVD laws, including imported goods that infringe patents or violate trademark law)

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Section 301 of the Trade Act of 1974, as amended (formal method for private interest to raise issues of actions of trading partners that either violate agreements or are otherwise unfair to U.S. interests)

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# What Businesses Should Do . . .

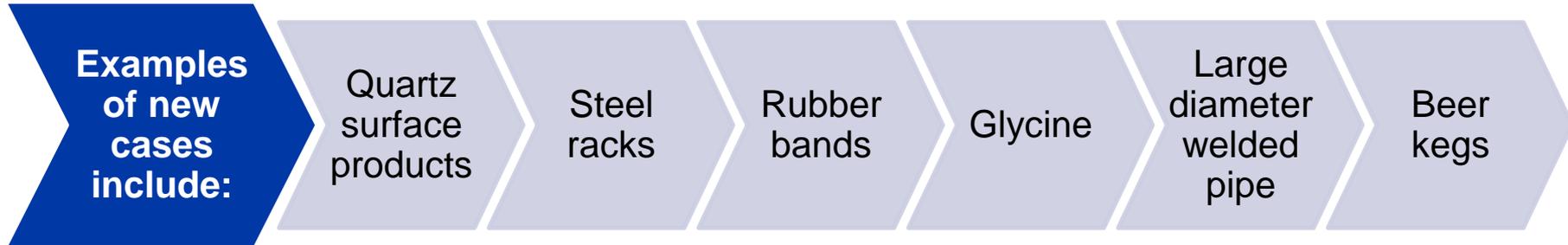
**Be aware of increased unfair trade actions:**

## **2018 YTD:**

The number of antidumping and countervailing duty cases is up 17% from the same period in 2016.

**2017:** 82 AD/CVD cases

**2018:** 54 AD/CVD cases to date



# What Businesses Should Do

## Be aware of increased unfair trade actions:

Third Country  
Cases Will  
Increase with  
Shifting  
Chinese  
Operations

Chinese business setting up operations in other Asian countries will face increased scrutiny

Monitor investment approach

Monitor ownership and initial management structures

Monitor sourcing of input goods for country of origin concerns

Monitor local incentives for operations and increased exports in 3rd Countries

Example: Glycine from Thailand where Chinese-owned Glycine respondent received 0.00% CVD Rate and Expect a 0.00% AD Rate with no Particular Market Situation concerns

# Other Customs Issues?

- **Questions of bonds, the role of the surety.**
  - Immediate increase in amount at risk for non-payment.
  - Bond increase modified by later exclusion?
- **Retroactive nature of any exclusion or modification.**
  - Pre or post liquidation?
- **Relationship with other legal provisions.**
  - FTAs:
    - NAFTA, KORUS but others?
  - Chapter 98:
    - American Steel Returned?



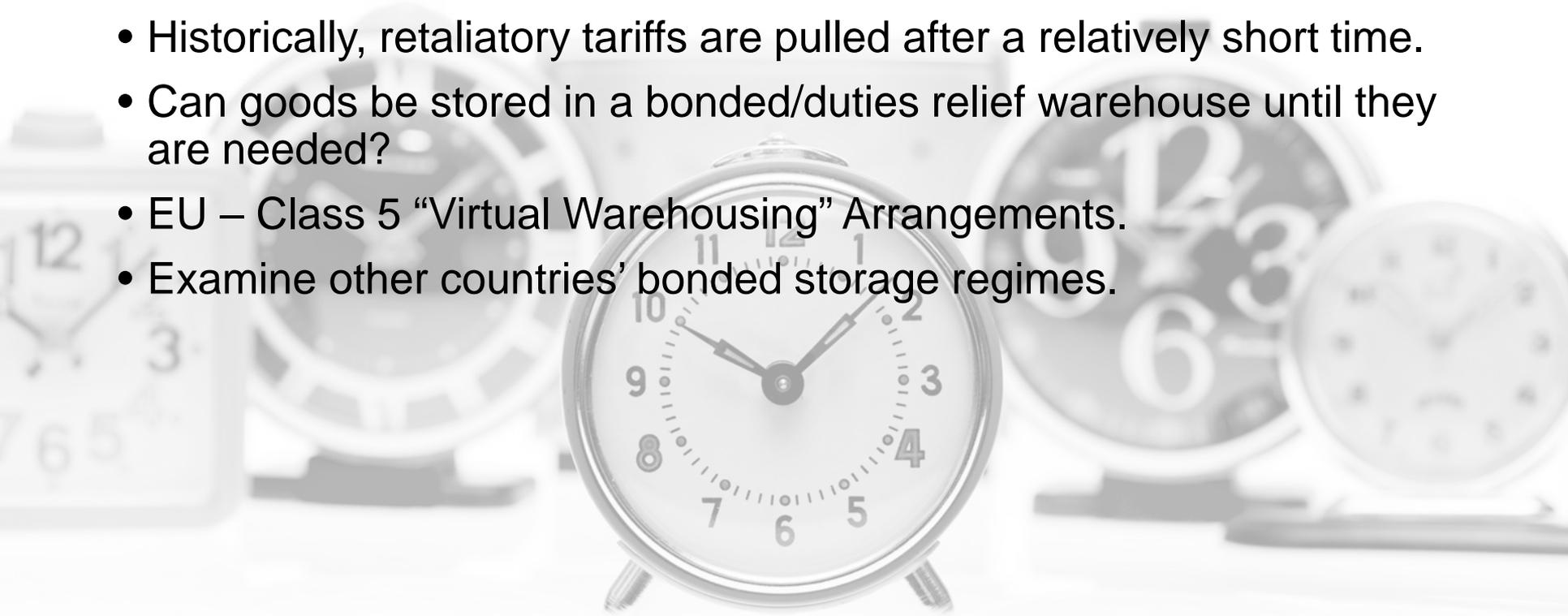
# Stay Tuned:

**Washington (CNN)** A draft bill leaked from the Trump administration proposed having the U.S. abandon key WTO principles and offered the President significantly more discretion over U.S. trade policy...

- White House spokeswoman Lindsay Walters told Axios that the leaked draft is not "actual legislation that the administration was preparing to rollout."
- The leaked proposal, referred to as the "United States Fair and Reciprocal Tariff Act," would give the President the authority, based on the administration's assessment of trading policies between nations, to renegotiate or apply tariffs as the President sees fit to push individual countries on trade.
- The report notes that the authority the proposal would grant the President would essentially mean moving away from collective rules underpinning the WTO.

# Can You Wait the Trade War Out?

- How long will the trade wars last?
- Historically, retaliatory tariffs are pulled after a relatively short time.
- Can goods be stored in a bonded/duties relief warehouse until they are needed?
- EU – Class 5 “Virtual Warehousing” Arrangements.
- Examine other countries’ bonded storage regimes.



# If All Else Fails...



Consider lobbying the foreign government to remove a product from its retaliation list.



Emphasize harmful effects to domestic industries in the country/trading area.



Go in with your foreign customer/partner.



Assume foreign governments' approach will be more nuanced than the United States'.



*Note: U.S. has “carousel” rotation requirements for Section 301 measures.*

# Keep Up the Pressure at Home...



***Bridge Project in Spokane, WA – on hold because of steel and aluminum tariffs***

- Adverse impact of additional tariffs continually documented.
- President believes tariffs will benefit him politically, likely to be in place until November elections.
- After elections, an assessment likely.
- Don't wait for the WTO to decide complaints lodged against U.S.
- Remind your Congressional representatives how the U.S. and foreign tariffs adversely affect your company.

# When the Trade War Ends...

- This trade war will end someday – hopefully soon.
- Companies should plan for post-trade war recovery.
  - Can duties paid be recovered through drawback or other programs?
  - What about VATs?
- Availability of post-war remedies will influence risk appetites now.



# Questions?



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