

# One Minute Memo®



## Trump Administration Signals Exemptions to Steel Tariffs Are a Long Shot

By Anthony LaPlaca

Builders and manufacturers who rely on imported steel as a major input may want to rethink their procurement strategy in light of an executive domestic preference decree issued last week. Under President Trump's Proclamation on Adjusting Imports of Steel into the United States, virtually any foreign steel articles withdrawn for consumption after midnight on March 23, 2018, will be subject to a 25% tariff, in addition to any other applicable duties, fees, and exactions.<sup>1</sup> Although Canadian and Mexican steel is exempt from the tariff, at least for the time being, those who import steel from competitive markets in Europe, Asia, and Australia will almost certainly be subject to this substantial new cost of using imported alloys, wrought iron, stainless steel, and other steel products covered by the Proclamation.<sup>2</sup>

### Legal Authority for the Tariff

The Trade Expansion Act of 1962 authorizes the President to adjust existing duties and import restrictions for any commodity "being imported into the United States in such quantities or under such circumstances as to threaten to impair national security."<sup>3</sup> As interpreted by a longstanding Department of Justice Opinion, the trade-security power is not subject to traditional administrative rulemaking requirements of notice, comment, and hearing—though in this instance, the Commerce Department voluntarily undertook these measures. Parlayed with his inherent power to manage international relations under Article II of the Constitution, the President's right to foster national security via trade restrictions is extremely broad, and likely immune from any constitutional challenge.

### The Forecast for Exemptions to the Tariff

Unlike other domestic preference requirements such as the Buy American Act, the Steel Tariff Proclamation does not explicitly provide for any carve-outs or exemptions to the 25% levy (other than for Canadian and Mexican steel). Under the Proclamation, the Commerce Department is required to publish the procedures and parameters for potential tariff exemptions, no later than March 18, 2018. Secretary Ross is currently slated to answer questions regarding the scope of

<sup>1</sup> <https://www.whitehouse.gov/presidential-actions/presidential-proclamation-adjusting-imports-steel-united-states/>.

<sup>2</sup> The specified steel articles covered by the Proclamation are those referenced in the Harmonized Tariff Schedule at the following 6-digit levels: 7206.1 through 7216:50; 7216.99 through 7301:10; 7302:10; 7302.40 through 7302.90; and 7304.10 through 7306.90.

<sup>3</sup> 19 U.S.C. 1862. President Carter's decision to impose tariffs on crude oil imports during the energy crisis of the 1970s is a paramount historical example of the President's trade-security function in action.

possible exemptions at a House committee hearing, albeit the day before the tariffs go into effect.<sup>4</sup> Thus, steel importers affected by the tariff are unlikely to receive any meaningful guidance on the exemption process before they become bound by the Proclamation.

Despite outcry from international trade partners and domestic industry advocates claiming that the tariff will kill jobs and chill investment, the Trump administration does not appear particularly willing to negotiate exemptions beyond those based on imminent national security concerns. The Proclamation cryptically leaves open the possibility of exemptions for those countries allied with the United States and who are willing to entertain “a satisfactory alternative means to address the threat to national security,” but this vague reference tells us little about the future for country-specific exemptions.

Certain industry players have advocated for an exemption to cover articles that are not manufactured in the United States in sufficient quantity or quality for their purposes. For example, the CEO of a major energy builder recently explained how his company will be crippled by the tariff because the type of 26-inch pipe needed for its ongoing oil pipeline projects is only made in three places around the world, none of which are in the U.S.<sup>5</sup> Neither the President nor the Commerce Secretary has indicated one way or another whether the Administration would be willing to entertain an exemption for articles that are primarily manufactured outside the United States.

Based on limited statements made by the administration, it appears that exemptions will likely be narrow and limited to instances where the steel tariff will impact national security. Although guidance is still forthcoming, such an exemption could possibly apply to construction projects that implicate national infrastructure, transit, or military facilities and operations.

## Monitoring Developments

Seyfarth Shaw will be monitoring the regulatory developments pertinent to the 25% steel tariffs over the next two weeks and beyond. The substantive and procedural measures prescribed by Commerce could have a considerable impact on the cost of doing business, particularly for industrial construction and infrastructure contractors who have already made plans to import structural steel and other components for nascent projects. Stay tuned for additional information as events unfold on Capitol Hill.

[Anthony LaPlaca](#) is an associate in Seyfarth’s Washington, D.C. office. If you have any questions, please contact Anthony LaPlaca at [alaplaca@seyfarth.com](mailto:alaplaca@seyfarth.com) or [a Seyfarth Construction attorney](#).

---

<sup>4</sup> William Mauldin, U.S. Companies Will Get Few Exclusions to Tariffs, Officials Signal, Wall. St. J., Mar. 14, 2018, <https://www.wsj.com/articles/commerce-officials-signal-few-product-exclusions-to-steel-aluminum-tariffs-will-be-granted-to-u-s-industry-1521045100>

<sup>5</sup> Jennifer Kaplan and Naureen S. Malik, Corporate America Makes Its Case that Trump’s Tariffs Don’t Apply, Bloomberg, Mar. 8, 2018, <https://www.bloomberg.com/news/articles/2018-03-08/with-tariffs-official-corporate-america-argues-they-don-t-apply>.

[www.seyfarth.com](http://www.seyfarth.com)

---

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP One Minute Memo® | March 16, 2018**

©2018 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.