Articles + Publications | June 5, 2024

Locke Lord QuickStudy: Important Update: Changes to Section 232 Exclusion Process and Biden ?Administration’s Tariff Policy

Locke Lord LLP

WRITTEN BY

Ryan Last

On May 17, 2024, the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) published a Final Rule revising the Section 232 tariff exclusion process for imported steel and aluminum products. Effective July 1, 2024, these revisions aim “to refine the framework under which exclusions from the tariffs on steel and aluminum can be requested, ensuring a fairer and more transparent process.” The Final Rule removes 12 General Approved Exclusions (“GAEs”) that were added in the December 2020 rule and maintained through the December 2021 rule, consisting of six GAEs for steel and six GAEs for aluminum. The BIS found that the exemptions no longer served their intended purpose of addressing the scarcity of certain products in the domestic market. As a result, certain steel and aluminum products will revert to the duties and treatment established under the March 2018 presidential proclamations, as revised by President Biden. With the exclusion process undergoing revision, businesses must ensure compliance with the updated regulations to avoid supply chain disruptions and/or penalties in their import operations.

New Tariff Policy: President Biden recently announced a series of policy measures to protect the U.S. steel, aluminum, and shipbuilding industries from allegedly unfair Chinese trade practices. During meetings with U.S. labor unions in Pittsburgh, Pennsylvania on April 17, 2024, President Biden unveiled these actions, which include:

1. Increasing Section 301 tariffs on Chinese steel and aluminum: The U.S. Trade Representative (“USTR”) will raise the current Section 301 tariffs on Chinese steel and aluminum products from 0-7.5% to 25% in 2024.

2. Initiating a new Section 301 investigation targeting Chinese shipbuilding, maritime, and logistics sectors: Responding to a petition filed by U.S. labor unions, USTR has launched a Section 301 investigation into China’s acts, policies, and practices supporting its maritime, logistics, and shipbuilding sectors.

3. Intensifying efforts to combat misrepresentation of Chinese origin steel transshipped through Mexico: The Biden Administration is working with Mexico to prevent transshipment of Chinese steel and aluminum products through Mexico into the United States.

4. Tariffs on electric vehicles (“EVs”) will see a significant increase from 25% to 100% in 2024. This action aims to protect American manufacturers from China’s unfair trade practices.

5. The tariff rate on lithium-ion EV batteries will rise from 7.5% to 25% in 2024, along with increases for other battery components and critical minerals. These adjustments are intended to reduce China’s control over certain segments of the EV battery supply chain and bolster U.S. domestic production capacity.

6. Solar cells will face a tariff rate increase from 25% to 50% in 2024 to counter China's policy-driven overcapacity, which depresses prices and inhibits global solar capacity development outside China.

7. Ship-to-shore cranes will see their tariff rate increase from 0% to 25% in 2024, supporting the rebuilding of U.S. industrial capacity and mitigating risks associated with excessive market concentration caused by China's unfair trade practices.

8. Medical products, including N95 masks, syringes, and needles, will be tariffed at a rate of 50% starting this year. These tariffs are designed to encourage U.S. buyers to develop alternate supply chains, given the strategic importance of these products.

9. Tariffs for critical minerals will increase from 0% to 25% this year. These will include manganese ores and concentrates; cobalt ores and concentrates; aluminum ores and concentrates; radium; uranium and its compounds, alloys, and mixtures; tungstites; and over a dozen other critical mineral products. The tariff on critical minerals comes as the U.S. seeks to decrease dependence on China, the leading supplier of many critical minerals key to electric vehicle, defense, and other high-technology products, and increases investment in domestic production of these materials. Tariffs of 25% on natural graphite will be delayed until 2026.

10. Tariffs on solar cells will double to 50% in 2024, regardless of whether they are assembled into modules at time of import. USTR noted that its concerns about solar panel overcapacity have continued for years.

Preparing for the New Section 232 Exclusion Process

- Conduct Risk Assessments: Evaluate the potential risks and opportunities associated with the revised exclusion process and tariff policy changes, considering factors such as product categories, sourcing regions, and market demand.
- Internal Policies & Procedures: Review and update internal policies and procedures to ensure compliance with the new regulations, including record-keeping requirements and communication with suppliers and customers.
- Seek Expert Guidance: Consider engaging legal and trade compliance experts to provide guidance and support in navigating the complexities of trade regulations and ensuring compliance with the revised exclusion process and tariff policies.

The new tariffs are intended to address national security risks by building on previous measures, such as the 2022 CHIPS and Science Act, which funds domestic computer chip research and development, and an August 2023 executive order that restricts U.S. investments in certain of China's advanced technology sectors. Tariffs, especially those under Section 201 of the Trade Act of 1974, remain a key tool for applying trade pressure on foreign subsidies and product dumping. Solar cell tariffs, initially imposed by President Trump in 2018 under Section 201, were extended by President Biden in February 2022 for another four years. These tariffs are now in force under a separate executive authority. In response, China has warned that such trade barriers could restrain the broader relationship between the two economic superpowers. Reflecting its discontent, China recently sanctioned 12 U.S. defense companies involved in arms sales to Taiwan, retaliating against American sanctions on Chinese firms linked to arms sales to Russia and highlighting the escalating trade tensions between the two nations.

Looking to the Future

The House of Representatives' Select Committee on the Communist Chinese Party have introduced a bipartisan bill, called the "NO LIMITS Act" (H.R.8043 – 118th Congress (2023-2024)), which would impose sanctions on any

Chinese military firm that provides material support to Russia. As currently drafted, the NO LIMITS Act would define military firms broadly to include Chinese companies operating in the technology sector of the economy of the Russian Federation, the defense and related materiel sector of such economy. Specifically targeted in the draft bill are Chinese manufacturers of electronic vehicles (“EVs”) that market EVs in Russia. Press reports indicate that the legislation has been spurred by the increasing volume of material imported by Russia from China, and the amount of Chinese product being used on the battlefield with Ukraine.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or ?tax advice. ??Please ??????reach out to the ?authors for any specific questions. We expect ?to continue to monitor the ??topics ??????addressed in this paper and provide ?future ?client updates when useful.?

RELATED INDUSTRIES + PRACTICES

- Corporate
- International
- Sanctions + Trade Controls