

The Impact of Recent Trade Remedy Measures on FTZs: What You Need to Know

In these current times of evolving trade policies, it is important that all stakeholders fully understand the possible impact of recent trade remedy measures on FTZ operations. This article summarizes the impacts and suggested actions for FTZ users, especially FTZ manufacturers. We strongly encourage you to contact us if you have any questions.

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On March 22, 2018, under Section 301 (hereinafter "Section 301") of the Trade Act of 1974 (19 U.S.C. §2411), President Trump issued a Presidential Proclamation announcing the imposition of a 25% tariff on more than 1,300 articles imported from China. The Presidential Proclamation is found here: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-actions-united-states-related-section-301-investigation/>. The subsequent *Federal Register* notice published on April 6, 2018, listed the U.S. Harmonized Tariff Schedule ("HTS") classifications subject to the additional duties. The *Federal Register* notice is found here: <https://www.gpo.gov/fdsys/pkg/FR-2018-04-06/pdf/2018-07119.pdf>.

Written comments on the proposed Section 301 tariffs may be submitted to the United States Trade Representative ("USTR") by May 11. A public hearing will take place May 15 and The National Association of Foreign Trade Zones ("NAFTZ") has requested to participate. An effective date of the Section 301 additional tariffs has not been announced yet and likely will not be announced until after the public hearing.

Every importer should closely evaluate the list of HTS classifications subject to the anticipated Section 301 additional tariffs and consider the following impacts to FTZ operations:

1. Merchandise subject to the Section 301 tariffs admitted into an FTZ on or after the effective date of the increased tariffs will be required to be admitted in "privileged foreign ("PF") status" and would be subject upon entry for consumption to the additional duty. This PF status admission requirement has been inserted in all of the recent trade remedies (Section 201, Section 232, and Section 301) to ensure that the additional duties become assessed and "locked in" at the time the subject merchandise is admitted to an FTZ.

2. If your company is an FTZ manufacturer and makes products in the zone (finished or intermediate) that would fall under any of the Section 301 HTS classifications, those zone-manufactured products will flag for the additional Section 301 duties on the Type 06 FTZ entry for removal from the zone, if the country of origin reported is China, per the CBP and Census Bureau guidance to report the “highest value foreign component country of origin” on entry documentation. This means that the value of non-privileged foreign (“NPF”) status parts and materials legally admitted to an FTZ for manufacture into a different finished product will be assessed the additional tariff even when as substantial transformation takes place and the FTZ-manufactured product becomes U.S. origin. We believe this is an unintended consequence of the trade remedy and can be solved with the proper direction from USTR and CBP, which CBP recently provided for the Section 232 remedy (see below). Please review the Section 301 HTS list against your zone-manufactured products HTS list and if you find overlap, please reach out to us immediately. You should also immediately raise this issue with your executive leadership.

If your company finds itself in scenario #2 above, please consider filing written comments to USTR. FTZ manufacturers must ensure that their voices are heard as it relates to unintended harm that the trade remedy will have on FTZ-based U.S. manufacturing. Time is of the essence, so please do not delay your review of the HTS list and submission of comments.

The Section 201 (solar cells and solar panels) and Section 232 (steel and aluminum) trade remedy measures impact FTZ users—and specifically FTZ manufacturers—in the same ways as the Section 301 measures. One noted difference is that the Section 232 Presidential Proclamation not only included the PF status admission restriction for subject merchandise admitted to FTZs on or after the effective date, but it also included unprecedented language that attempts to “reach back” and apply the Section 232 additional tariffs to merchandise admitted to FTZs in PF status prior to the effective date of the order. The legality of this provision is questionable.

On April 30, 2018, CBP issued a CSMS message, found here: [#18-000315](#) titled, “UPDATE: Additional Duty on Imports of Steel and Aluminum Articles under Section 232”. That CSMS message contains the following important context for FTZ manufacturers:

Foreign Trade Zones

Any steel or aluminum article, except those eligible for admission under "domestic status" as defined in 19 CFR 146.43, subject to the Section 232 duties, that is admitted into U.S. foreign trade zones on or after 12:01 a.m. eastern daylight time on March 23, 2018, must be admitted as "privileged foreign status" as defined in 19 CFR 146.41, and will be subject upon entry for consumption to any ad valorem rates of duty related to the classification under the applicable HTSUS subheading.

Any steel or aluminum article, except those eligible for admission under "domestic status" as defined in 19 CFR 146.43, subject to the 232 duties, that was admitted into U.S. foreign trade zones under "privileged foreign status" as defined in 19 CFR 146.41, prior to 12:01 a.m. eastern daylight time on March 23, 2018, will likewise be subject upon entry for consumption to any ad valorem rates of duty related to the classification under applicable HTSUS subheadings imposed by the Proclamations.

Aluminum or steel articles shall not be subject upon entry for consumption to Section 232 duties, merely by reason of manufacture in a U.S. foreign trade zone. However, articles admitted to a U.S. foreign trade zone in "privileged foreign status," shall retain that status consistent with 19 CFR 146.41(e).

On May 1, 2018, CBP also issued CSMS message, found here: [#18-000317](#), which states the following (pertinent section highlighted):

UPDATE: Additional Duty on Imports of Steel and Aluminum Articles under Section 232 of the Trade Expansion Act of 1962

REVISED VERSION WITH NEW FILING REQUIREMENTS FOR IMPORTS OF ALUMINUM AND STEEL FROM SOUTH KOREA

BACKGROUND:

On March 8, 2018, the President issued Proclamations 9704 and 9705 on Adjusting Imports of Steel and Aluminum into the United States, under Section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), providing for additional import duties for steel mill and aluminum articles, effective March 23, 2018. See the Federal Register, 83 FR 11619 and 83 FR 11625, March 15, 2018. On March 22, 2018, the President issued Proclamations on Adjusting Imports of Steel and Aluminum into the United States. See the Federal Register, 83 FR 13355 and 83 FR 13361, March 28, 2018. On April 30, 2018, the President issued Proclamations on Adjusting Imports of Steel and Aluminum into the United States.

These duty requirements are effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on March 23, 2018.

COMMODITY:

Steel mill and aluminum articles, as specified in the Presidential Proclamations.

COUNTRIES COVERED BY SECTION 232 IMPORT DUTIES:

Please note that the Section 232 measures are based on the country of origin, not the country of export.

Steel:

May 1, 2018 through May 31, 2018: All countries of origin except Canada, Mexico, Australia, Argentina, South Korea, Brazil and member countries of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom).

As of June 1, 2018: All countries of origin except Argentina, Australia, Brazil, and South Korea.

Quota for Steel Imports from South Korea

A separate CSMS will be issued with details on the quota on steel imports from South Korea.

Aluminum:

May 1, 2018 through May 31, 2018: All countries of origin except Canada, Mexico, Argentina, Australia, Brazil and member countries of the European Union (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom).

As of June 1, 2018: All countries of origin except Argentina, Australia, and Brazil.

Note: As of May 1, 2018, aluminum articles from South Korea are subject to the Section 232 import duties. Importers may receive a quota hold message for imports of such articles; however, a quota is not in effect for imports of aluminum from South Korea.

For both steel and aluminum, imports of United States origin are not covered by the Section 232 measures.

While this is a positive step in the right direction, further guidance and clarification should be issued by CBP as to the correct mechanism for reporting FTZ-manufactured products on Type 06 entries.

Please see additional CSMS messages: #[18-000257](#) and #[18-000258](#)

Please share with us any feedback you have about these issues.