

EFFECTS OF THE TRUMP ADMINISTRATION'S NEW 25% TARIFF ON STEEL

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On March 8, 2018, President Trump issued a proclamation formally ordering tariffs on steel and aluminum imports. The proclamation states that starting March 23, 2018, all “steel articles” imports “entered, or withdrawn from warehouse for consumption” will be subject to an additional 25% duty (essentially, a tax). The proclamation defines “steel articles” to include flat-rolled products, bars, rods, wire, sheet piling, rails, fish-plates, sole plates, tubes, pipes, hollow profiles, ingots, and stainless steel products.

The tariff applies to imports of steel articles from all countries except Canada and Mexico, which the President described as a “special case” given the “shared commitment” between those countries and the United States “to supporting each other” in certain national security and economic matters. March 8, 2018 Proclamation, para. 10.¹ The proclamation mentions only Canada and Mexico, but on March 22, 2018, the President announced temporary exemptions for Argentina, Australia, Brazil, South Korea, and the countries in the European Union. It is unclear how long those exemptions will last. Additionally, a procedure will be put in place whereby importers can request special exclusions from the tariff in very limited circumstances.

Since the tariff was announced, speculation has been rampant about its effect on the construction industry. Many industry groups have issued statements on the issue. One such announcement, from the American Road & Transportation Builders Association (ARTBA), forecasts that the tariff will drive up the price of domestic steel by creating a supply vacuum, create uncertainty in the steel market, and cause construction costs to increase across-the-board to the detriment of both contractors and owners.² However, with a different perspective, the American Institute of Steel Construction (AISC) has stated it believes that the 25% steel tariff will impact the total cost of project steel by only 5-10%, and total project costs by “less than 2%.” In its statement, AISC urged its members and customers to view the steel tariff in context, pointing out that the index cost of ready-mix concrete has increased 17% in the past several years, during which time the index cost for steel has allegedly decreased.³

The ultimate effects of the tariff on both the steel market and overall construction industry remain unclear. While those effects unfold, contractors should begin taking steps to address them, such as:

- Checking existing contracts for escalation clauses that might provide relief in the event of material cost increases and delivery delays. For example, Federal Acquisition Regulation (FAR) clause 52.229-3: “Federal, State and Local Taxes” provides for price adjustments related to after-imposed federal excise taxes and duties in some circumstances on federal projects.
- Including provisions to address cost escalations (for steel in particular) in new contracts at all levels. In addition to dealing with overall price increases, contractors should consider how to address scheduling obstacles created by the steel tariff, as changes in the U.S. steel market could significantly impact material lead times.

Note that absent a contract clause specifically providing for a price or time adjustment for things like steel escalation, contracting parties generally will not be entitled to such adjustments, and must absorb any related additional costs. This is true at both the prime and subcontract level. Parties also need to be ready for practical implications, since, if a party cannot get contractual relief for such adjustments they may just decide to not honor their contracts instead of bearing the additional burden; which can dramatically impact performance periods and costs to “cover” the non-performance.

For more information, please contact the author, Gretchen M. Ostroff, Esq.

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

FN 2 For more information, ARTBA's March 9, 2018 press release can be found here: <https://www.artba.org/2018/03/09/artba-released-following-statement-regarding-president-trumps-decision-impose-tariffs-steel-aluminum-imports/>

FN 3 AISC's March 5, 2018 communication on the new tariffs can be found here: <https://www.aisc.org/globalassets/aisc/aisc-post-on-tariffs-030518.pdf>

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