



# The Bottom Line

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## CIT STRIKES DOWN EXPANDED SCOPE OF SECTION 232 DUTIES

### Summary

The Court of International Trade (CIT) has ruled that the scope expansion of Section 232 duties, on aluminum and steel, to include 'downstream' products was undertaken outside the time limit set forth in the regulation.

### Background

Section 232 of the Trade Expansion Act of 1962 gives the President the authority to impose duties on products imported to the United States, if those products are considered a threat to national security. Presidential proclamations dated March 8, 2018 indicated that aluminum and steel were being imported in such quantities as to risk the domestic market being able to "satisfy existing national security needs or respond to a national security emergency". Tariffs of 10% on aluminum and 25% on steel were enacted. The duties were applied to both rough and finished products. Several countries have since agreed to voluntarily limit their exports to the United States and have had the duties on aluminum, steel, or both lifted.

Since the imposition of tariffs, the Secretary of Commerce's office monitored imports and noted an increase in derivative products of both aluminum and steel, while imports of less-finished forms dropped. The net effect of this shift undermined the administration's efforts to shield national security. As a result, the duties were expanded to cover these derivatives in February of 2020. The products that were subjected to the additional duties were defined as containing two-thirds or more of aluminum or steel by cost of the materials and saw year over year increases in imports since the imposition of the original section 232 duties.

### Current Status

In February of 2021, a three-judge panel unanimously supported the overall validity of the Section 232 tariffs on steel and aluminum. This tariff went against a challenge brought by importers, claiming that they were the result of an overbroad interpretation of 'national security' in the context of the original legislation.

This more recent ruling concluded that Proclamation 9980 was void from the outset because it came too late and had no independent basis. The Proclamation was issued by President Trump, resting on the theory that the President had the power to issue the Proclamation based on earlier findings on different products. As the CIT states in its opinion regarding the inability to rely on an earlier finding regarding different products: "Because the President issued Proclamation 9980 after the congressionally-delegated authority to adjust imports of the products addressed in that proclamation had expired, Proclamation 9980 was action outside of delegated authority."

### Impact

While the ruling does not affect the original Proclamations (9704 and 9705) which established the Section 232 duties on steel and aluminum, this directive instructs that all entries affected by this litigation be: (i) liquidated without the assessment of duties if still pending; and (ii) refunded if such duties have already been collected and liquidated.

The U.S. government is expected to appeal the CIT decision to the U.S. Court of Appeals of the Federal Circuit, relying on the dissenting opinion of CIT Judge Miller Baker. While importers can't expect a check yet, the case provides some hope for importers of steel and aluminum finished products, and has implications for another case pending in front of the Court of International Trade regarding the legality of the Tier 3 and Tier 4 China tariffs on the same grounds, that the scope of the original ruling was expanded outside the effective time limit.

### RESOURCES

[PrimeSource Building Products Inc. v. United States](#) (Court of International Trade)

[CIT Declares Section 232 Steel Tariffs on "Derivatives" Under Proclamation 9980 Invalid and Contrary to Law](#) (International Trade Insights, Husch Blackwell)

[CIT Invalidates President Trump's Section 232 Tariffs on Steel and Aluminum "Derivative Articles"](#) (Thompson Hine SmarTrade)