

CIT Decision on Turkish Steel Tariffs

On July 14, 2020, the U.S. Court of International Trade (CIT) ruled that President Trump's decision to double tariffs on Turkish steel based on Section 232 violated both the Constitution's guarantee of equal protection, the procedural requirements, and that it lacked a nexus to national security. This may lead to importers of Turkish steel claiming refunds.

In April 2017, the Secretary of Commerce initiated an investigation into the effect of imported steel on national security and in January 2018 issued his report finding that the investigated imports are a threat to national security. In March 2018, President Trump timely issued Proclamation 9705 in a timely manner (within 90 days of the January report) which imposed a 25 percent ad valorem tariff on imports of steel products from all countries. However, on August 10, 2018 (outside of the statutory time limit), the President issued Proclamation 9772, which increased the amount to a 50 percent ad valorem tariff on steel products imported from Turkey based on the same report.

An importer of Turkish steel products, Transpacific Steel LLC, brought the suit against the U.S. government; a Turkish steel exporter, Borusan Mannesmann joined as an intervening plaintiff as well, asserting that the second proclamation doubling the tariff on Turkish steel products was unlawful for a number of reasons.

The CIT ruled that the President's doubling of the tariff was outside the statutory time limits required by Section 232. The government contended that the president had the authority to modify Section 232 tariffs outside the timelines, but the CIT did not agree. Further, the CIT pointed out that the national security claim was not a justification for imposing increased tariffs since the report issued by Commerce had evaluated the collective impact of steel imports on national security, not the impact of imports from Turkey alone. Thus, the proclamation was in violation of equal protection, as well as "arbitrary and irrational," the court said.

In bringing this court challenge, Transpacific Steel sought a refund of a purported \$2.8 million in additional tariffs it had to pay. With the court's ruling that they are entitled to a refund, other importers of Turkish steel will undoubtedly be claiming refunds for payments made during the period in which the tariffs were doubled.

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