

**The following information was provided to us by our Customs Brokers Association and is NOT to be considered legal advice. Importers are urged to seek advice from an experienced attorney due to the complexity of the Section 232 duties.**

### **Section 232 Duties on Steel and Aluminum**

Despite the requirements that Section 232 duties are assessed based on the value of the steel and aluminum content of the subject goods, CBP still has not published binding, formal legal guidance for calculating the value.

CBP's Base Metals Center of Excellence and Expertise ("Center") recently provided informal guidance attached, which now has been included in CBP Notices of Action advising importers that:

#### **WHEN THE PRODUCT IS 100% STEEL or 100% ALUMINUM**

- Where the imported articles are 100% steel or 100% aluminum, there is no backing out of any costs not allowed by the customs value laws. Accordingly, manufacturing, labor, coating, etc. costs are not subtracted; and

#### **WHEN THE PRODUCT IS NOT 100% STEEL or 100% ALUMINUM**

- Where the imported articles are not wholly of steel or aluminum the valuation of the non-metal content is based on the price that the *importer* paid for the steel/aluminum content of the *finished* article and is the entered value of the imported article minus the cost of the non-steel/aluminum part/component of the finished article. Accordingly, non-steel/aluminum content does not refer to fabrication, machining, labor, costs, etc.

This is only the Base Metal Center's interpretation of HQ's formal guidance and is not legally binding unless and until HQ issues a ruling or decision on the issue. However, if and when an importer receives a Notice of Action advising them to declare the value in this manner, it could be seen as a lack of reasonable care not to follow CBP's instruction, requiring them to file a protest or internal advice request for a legally binding HQ ruling.

The HQ FAQ may continue to be reasonably read to permit valuation based on the price paid by the foreign fabricator (as the "buyer" of the steel or aluminum content) to its steel or aluminum supplier (the "seller"). While this approach arguably aligns with the actual steel or aluminum cost in the production chain and with the statutory principles set forth in 19 U.S.C. § 1401a, the Base Metal's instruction to the contrary must be considered as it very well could reflect CBP's future position when they issue a binding ruling or decision on the matter. That would represent the legal precedent to follow unless a court rules otherwise.

### **OUR ADVICE AT THIS POINT IN TIME**

- While this is a critically important matter for importers impacted by these Section 232 duties, clear guidance from Customs is not currently available. Every importer is expected to exercise reasonable care in all their dealings with U.S. Customs, and in a case like this where binding legal guidance has not been given by Customs, importers face even greater risks.
- We believe that it may be prudent for importers of products subject to Section 232 duties to seek guidance from an experienced attorney to ensure that their practices are in line with the Customs Regulations, even when those regulations seem unclear. (we can offer an attorney referral if one is needed).
- Customs Brokers do not offer legally binding advice; our advice is merely based on our opinion and interpretation of the applicable rules and regulations and should **NOT** be relied upon as legal advice.

### **IMPORTANT NOTICE**

If your company is contacted by US Customs via email or by the issue of a CBP28 (Request for Information) or CBP29 (Notice of Action), please contact us immediately for further guidance. Importers must follow Customs' advice in cases like this and should seek an attorney's guidance in responding to any such requests for notifications from U.S. Customs.

Please contact [steve@cssbrokers.com](mailto:steve@cssbrokers.com) with any questions.

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