

Commerce Proposes Revisions to Section 232 Steel and Aluminum Tariff Exclusions Process

August 31, 2023

Deadline of October 12th to Submit Comments

On August 28, 2023, the U.S. Department of Commerce (“Commerce”) published in the Federal Register a [proposed rule](#) that makes certain revisions to the Section 232 steel and aluminum tariff exclusions process. The proposed rule is focused on changes that are expected to assist Commerce in more efficiently handling the continuing large volume of exclusion requests and objections submitted to the agency.

The deadline for submitting comments on the proposed changes is October 12, 2023, and comments must be identified by docket number BIS-2023-0021 or RIN 0694-AJ27, and submitted through the Federal eRulemaking website: <http://www.regulations.gov>.

Background

On March 8, 2018, President Trump exercised his authority under Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. § 1862) to impose a [25 percent tariff on imports of steel](#) and a [10 percent tariff on imports of aluminum](#), following an investigation by Commerce that concluded imports of both metals posed a national security risk. Subsequent to these actions, the U.S. government negotiated several country-specific tariff exclusions, such as for Canada and Mexico. Additionally, to limit the tariffs’ potential negative impact on U.S. businesses and consumers, Commerce developed a mechanism for U.S. companies to apply for product-specific exclusions due to (1) domestic unavailability due to circumstances of quantity or quality, and (2) specific national security considerations. The exclusions process was established on March 19, 2018 pursuant to an [interim final rule](#) (“IFR”) issued by Commerce’s Bureau of Industry and Security (“BIS”). Since the implementation of the exclusions process, BIS issued four additional IFRs that made various revisions to the Section 232 exclusions process.

Proposed Revisions

The latest round of proposed revisions makes four key changes to the Section 232 exclusions process by: (1) creating a more expansive process for General Approved Exclusions (“GAE”); (2) establishing a General Denied Exclusions (“GDE”) process; (3) modifying existing certification language and introducing new certification requirements for exclusion requests; and (4) proposing similar certification language on the objection form to further ensure objectors can supply

comparable quality and quantity steel or aluminum and make it “immediately available” to requesters in line with the standards described in the previously-issued Section 232 IFRs.

General Approved Exclusions

In December 2020, Commerce promulgated the [fourth IFR](#) pertaining to the Section 232 exclusions process. An important change in that rule was the creation of GAEs, which provide for an unlimited exclusion for certain products to which no domestic producer objected. The GAEs were identified at the ten-digit statistical reporting number of the Harmonized Tariff Schedule of the United States and intended to improve the overall efficiency of the exclusions process and to ease the administrative burden on the agency. As Commerce notes in the IFR, implementation of GAEs resulted in an immediate decrease of 5,000 exclusion requests annually.

BIS proposes changing the criteria from granting exclusions for products that have received no objections to HTSUS classification codes (or sub-products) with very low rates of successful objections. While BIS still believes that the number of objections received is generally the right criterion to use in identifying GAEs, the challenge with the current process is that any party seeking to prevent Commerce from establishing a GAE can submit an objection and the relevant HTSUS category would be ineligible for GAE status, regardless of the merits of the objections. BIS estimates that the suggested new approach could result in up to a 20 percent decline in the total number of exclusion requests received.

General Denied Exclusions

Similar to the existing GAE process, BIS is proposing to establish a GDE process to improve the efficiency of the Section 232 exclusions process. According to the proposed rule, GDEs will generally be implemented if, among other things, the HTSUS classification code (or sub-products) have very high rates of successful, substantiated objections. This change is aimed at reducing the burden on objectors and requesters with respect to Section 232 exclusion requests that historically have a very low likelihood of being approved. While BIS has not proposed any specific GDEs yet, in response to a public comment suggesting that semi-finished steel products should be removed from the list of products eligible for an exclusion, BIS stated that it will consider this further and that it is possible that this product could be covered by a GDE.

Exclusion Request Certifications and Evidence

The proposed rule adds new certification and evidentiary requirements for exclusion requesters. Pursuant to the new rule, before filing an exclusion request, requesters must certify that they have first made reasonable efforts to source their products from a supplier in the United States and then, if unsuccessful, that they have made reasonable efforts to source their product from a supplier in a country with which the United States has arrived at a satisfactory alternative means to address the threat to the national security under Section 232 (i.e., quota, tariff-rate quota, exemption, etc.), and provide evidence of those sourcing attempts simultaneously with the request submission. These sourcing attempts need to have been made within 12 months from the date of submission of the exclusion request. Failure to provide this information will result Commerce’s rejecting the exclusion request.

Additionally, in response to a public comment, BIS stated that it encourages requesters to include in their exclusion requests evidence of lack of responsiveness to requests for quotes from domestic producers that continue to file objections.

BIS is seeking comments regarding the appropriate form and substance of evidence that must be provided by requesters to support their certification of sourcing attempts.

Objection Certifications and Evidence

The proposed rule introduces additional certification requirements on objection forms, as well as evidence requirements for objection submissions. The proposed rule states that “these certifications and additional evidentiary requirements are designed to address concerns of objectors filing objections when they cannot or will not provide the requested product.” Under the proposed certification requirement, objectors must certify that they currently manufacture the requested product at a facility in the United States and that, in response to a written request by a requester within the next year, they will offer to sell and make “immediately available” to the requester the full quantity of the product at then-existing market rates and terms in accordance with the other terms specified in the objection.

Additionally, objectors will be required to file, simultaneously with their objection submission, evidence that they have commercially sold the product subject to the exclusion request within the last 12 months, or evidence that they have engaged in sales discussions with the requesting company or another company requesting the same product within the last 12 months.

BIS is seeking comments regarding the appropriate form and substance of evidence that must be submitted by objectors to support their certification of sales discussions. BIS is also seeking comments on whether it is appropriate to require objectors to certify that they can supply comparable quality and quantity steel or aluminum and make it “immediately available,” or whether a different time period should be specified for the certification. If a commenter suggests a different time period, BIS has urged commenters to address whether different types of products may require longer periods.