

Commerce Introduces General Approved Exclusions (GAEs) and Other Changes to the Section 232 Exclusions Process

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Key Points

- On December 14, 2020, Commerce promulgated a fourth **interim final rule** to revise certain aspects of the Section 232 steel and aluminum exclusions process.
- One notable change is the creation of GAEs, which can be used by any importer, are indefinite in length and are not subject to quantity limitations.
- The interim final rule includes an initial list of 108 GAEs for steel articles and 15 GAEs for aluminum articles, and CBP has issued corresponding guidance on how to apply the GAEs to eligible articles at entry.
- In addition, the interim final rule introduces various changes to the Section 232 exclusion request process—including a volume certification requirement, a broader definition of “immediately available,” and word limits for submissions (among others).
- Commerce is accepting comments on the interim final rule until **February 12, 2021**, and intends to issue an at least one additional interim final rule.

Background

At present, certain articles of steel and aluminum are subject to additional duties or quantitative limits (i.e., absolute quota limits) imposed pursuant to Section 232 of the Trade Expansion Act of 1962 (“Section 232”). The additional duties and absolute quota limits have been imposed through a series of presidential proclamations (e.g., Presidential Proclamations 9704, 9705, 9739, 9740, 9758 and 9759), and apply to certain steel and aluminum products imported into the United States. Generally, covered steel products are subject to absolute quota limits if produced in certain countries (currently Argentina, Brazil or South Korea) and are otherwise subject to Section 232 duties of 25 percent ad valorem (with exceptions for products of Australia, Canada and Mexico). Likewise, covered aluminum products are generally subject to absolute quota restrictions if produced in certain countries (currently Argentina, and as of February 3, 2021, the United Arab Emirates) and are otherwise subject to Section 232 duties of 10 percent ad valorem (with similar exceptions for products of Australia,

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Canada and Mexico). The Section 232 duties also apply to certain steel and aluminum derivative products from various countries, and to non-alloyed unwrought aluminum from Canada (as detailed in Akin Gump's International Trade Alerts of [February 7, 2020](#), and [August 14, 2020](#)).

At the same time, the U.S. Department of Commerce ("Commerce") has established and administered a product exclusion process to provide targeted relief from both the Section 232 duties and absolute quota limits. Until recently, Commerce has granted exclusions on a case-by-case basis in response to a specific and affirmative request (i.e., an "exclusion request"). Each request must validate the classification of the article under the Harmonized Tariff Schedule of the United States (HTSUS), and demonstrate that the article is not produced domestically in a sufficient quantity or a satisfactory quality or that the article should be excluded from Section 232 absolute quota limits or duties for national security reasons. An exclusion granted pursuant to such a request can only be used by the requestor and applied to the article subject to the request.

Against this backdrop, on December 14, 2020, Commerce issued an interim final rule that adopted certain changes to the Section 232 exclusions process ("December 2020 interim final rule"). The interim final rule follows three previous interim final rules—issued in March 2018, September 2018 and June 2019—and makes changes in response to comments received on the latter two (as well as certain comments received in response to a May 2020 [notice of inquiry](#)). As detailed below, the key changes include the introduction of General Approved Exclusions (GAEs) for use by "any importer," volume certification requirements for exclusion requests, and a broadened definition of the term "immediately available" for the benefit of objectors.

Implementation of General Approved Exclusions

As of December 29, 2020, the new GAEs can be used by "any importer" to exclude eligible products from the Section 232 absolute quota limits or duties. The GAEs are intended to streamline the exclusion process and reduce the administrative burden for steel and aluminum articles that are not subject to an objection. Key points regarding the GAEs are as follows:

- **Current GAEs.** Pursuant to the December 2020 interim final rule, there are currently 108 GAEs for steel products and 15 GAEs for aluminum products. The list of steel GAEs can be found in new [Supplement No. 2 to 15 C.F.R. § 705](#) and the list of aluminum GAEs can be found in new [Supplement No. 3 to 15 C.F.R. § 705](#).
- **Application and procedure.** GAEs are available for use by "any importer" (as noted above) and do not include quantity limits. U.S. Customs and Border Protection (CBP) has issued instructions for applying the GAEs at entry—including (1) instructions for applying GAEs to [articles that are normally subject to Section 232 absolute quota limits](#); and (2) separate instructions for applying GAEs to [articles that are normally subject to Section 232 duties](#). Note that CBP's instructions vary from Commerce's instructions in the interim final rule and the new supplements to 15 C.F.R. § 705, as CBP acknowledges in the instructions.
- **Limitations.** There is no retroactive relief for GAEs. Additionally, the current GAEs do not include exclusions for steel and aluminum derivative products.
- **Future changes.** The current GAEs are indefinite in length. However, Commerce can modify the GAE list at any time by issuing a notice to add new GAEs or revise

existing GAEs. Changes to the GAEs will take effect 15 calendar days after publication of the relevant notice in the Federal Register.

Other Changes to the Section 232 Exclusions Process

In addition to introducing the GAEs, the December 2020 interim final rule makes various changes to the Section 232 exclusion request process. These include the following:

- **Volume certification requirement.** When filing exclusion requests, requestors must now certify certain information regarding the article covered and volume requested—including an attestation that the requestor can produce substantiating documentation upon request by Commerce. The text of the certification and signing requirements can be found in [Supplement No. 1 to 15 C.F.R. § 705](#), under Subsection (c)(5)(ii) (“Certification for volume requested.”). The intent of this requirement is to ensure volumes requested are consistent with “legitimate business needs.”
- **Revised definition of “immediately available.”** The interim final rule revises the definition of “immediately available” to include articles that can be manufactured either: “within eight weeks” or “by a date earlier than the time required for the requester to obtain the entire quantity of the product from the requester’s foreign supplier.” Previously, the definition of “immediately available” was limited to articles that could be manufactured in eight weeks. The revision is intended to “create a more equal playing field between U.S. objectors and foreign producers.”
- **Word limits.** The interim final rule imposes a 5,000-word limit on exclusion requests and objections, and a 2,500-word limit on rebuttals and surrebuttals—to include attachments and exhibits (but to exclude the respective forms and confidential business information provided to Commerce). These limits replace the previous 25-page limit on exclusion requests and 10-page limit on rebuttals and surrebuttals.
- **Other changes and clarifications.** Additional changes introduced by the interim final rule include (among others): An amendment to clarify that a single exclusion request can be filed for an article with a range of dimensions, provided the range is captured within a single 10-digit HTSUS subheading; an amendment to clarify that exclusions granted in response to a specific exclusion request (i.e., non-GAEs) will be approved for one year from the date of the signature on the Commerce decision memorandum; an amendment to specify that the 30-day objection period begins at 11:59 p.m. EDT on the day on which an exclusion requested is posted in the Section 232 Exclusions Portal; a new reminder that parties of the consequences for false statements or representations; and other conforming, structural or technical changes to the supplements to 15 C.F.R. § 705 (e.g., consolidation of Supplement No. 1 and previous Supplement No. 2). A list of changes is included in pages 81069-71 of the December 14, 2020, [Federal Register](#) notice that sets forth the interim final rule.

Opportunity to Comment and Future Interim Final Rule

Commerce has invited public comments on the December 2020 interim final rule, and requests input on whether the changes in the rule “have addressed earlier concerns” with the Section 232 exclusions process. Commerce specifically encourages

commenters to identify “which features are an improvement” and to highlight “any areas for concern” or “suggestions for improvement.” Comments must be submitted at www.regulations.gov, under the docket number BIS-2020-0022 or RIN 0694-AH55, by **February 12, 2021**.

Additionally, Commerce intends to issue at least one subsequent interim final rule that will address comments received in response to its May 2020 [notice of inquiry](#). The prospective publication date for the subsequent rule is currently unknown.

Recommendations and Next Steps

- Importers facing Section 232 absolute quota limits or duties should check whether their products are eligible for a steel GAE under [Supplement No. 2 to 15 C.F.R. § 705](#) or for an aluminum GAE under [Supplement No. 3 to 15 C.F.R. § 705](#). To increase certainty, importers can validate their product classifications by requesting a binding tariff classification ruling from CBP. Akin Gump can advise on tariff classification and can assist in preparing a ruling request.
- Filers of exclusion requests should assess the changes introduced by the interim final rule, and make any adjustments that are needed to comply with new requirements. In particular, filers should review the new volume certification requirements set forth in [Supplement No. 1 to 15 C.F.R. § 705](#) (Subsection (c)(5)(ii)), ensure they are able to comply with the certification requirements, and be prepared to substantiate any certification upon request by Commerce.
- Interested parties should consider filing a comment on the December 2020 interim final rule by the **February 12, 2021** deadline. Akin Gump can assist in drafting and filing comments.

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