

FAQs on Section 232 Tariffs on Imports of Steel and Aluminum

1. What is the tariff rate and what are the specific products subject to the tariff order on imports of steel and aluminum?

The 232 tariff rates apply to steel and aluminum products classified under specific Harmonized Tariff Schedule of the United States (HTSUS) classifications (the descriptions provided below are for ease of reference). The 232 tariffs are 25% for steel and 10% for aluminum. The 232 tariffs are in addition to any preexisting tariffs (e.g., AD/CVD duties).

STEEL	
Tariff Classification	Description
7206.10 through 7216.50	Ingots, semi-finished iron/non-alloy steel , flat rolled (cold rolled, hot rolled, coated), bars and rods, angles, shapes and sections.
7216.99 through 7301.10	Wire; stainless steel : ingots, flat rolled, bars and rods, wire; alloy steel : ingots, flat rolled, bars and rods, wire, angles, shapes and sections; sheet piling
7302.10	Rails
7302.40 through 7302.90	Fish and sole plates
7304.10 through 7306.90	Line pipe, drill pipe, cold drawn tubes

ALUMINUM	
Tariff Classification	Description
7601	Unwrought aluminum
7604	Bars, rods and profiles
7605	Wire
7606 and 7607	Plate, sheet, strip and foil
7608 and 7609	Pipes, tubes and fittings
7616.99.51.60 and 7616.99.51.70	Castings and forgings

2. In addition to raw materials, does the tariff order apply to finished goods that contain steel? For example, does the tariff apply to automotive parts (drums, rotors, etc.) containing steel that are imported as a finished product?

The 232 tariffs apply to products classified under the classifications set forth above at the time of importation. In general, these classifications apply to inputs, not finished goods.

3. What is the criteria for products to qualify for an exclusion? How can companies apply?

On March 19, 2018, the U.S. Department of Commerce ("DOC") published regulations allowing US individuals and companies to request exclusions for products affected by the 232 tariffs. The DOC's Bureau of Industry and Security ("BIS") is the agency responsible for processing the exclusion requests.

Eligibility. Only individuals or organizations using steel or aluminum in business activities (e.g., construction, manufacturing, or supplying steel or aluminum products to users) in the United States may submit exclusion requests.

Requirements. An exclusion request must be filed electronically and include the submitter's name, date of submission, and the 10-digit Harmonized Tariff Schedule of the United States ("HTSUS") statistical reporting number.

Separate exclusion requests must be submitted for steel products with chemistry by percentage breakdown by weight, metallurgical properties, surface quality (e.g., galvanized, coated, etc.), and distinct critical dimensions (e.g., 0.25-inch rebar, 0.5-inch rebar; 0.5-inch sheet, or 0.75 sheet) covered by a common HTSUS subheading. Similarly, separate exclusion requests must be submitted for aluminum products with distinct critical dimensions (e.g., 10 mm diameter bar, 15 mm bar, or 20 mm bar) covered by a common HTSUS statistical reporting number.

In addition, separate exclusion requests are also required for products falling in more than one 10-digit HTSUS statistical reporting number.

There is no time limit for submitting exclusion requests.

Approval. DOC will approve exclusion requests on a product basis and the approvals will be limited to the individual or organization that submitted the specific exclusion request, unless DOC approves a broader application of the product-based exclusion request to apply to additional importers.

Other individuals or organizations that wish to submit an exclusion request for a steel or aluminum product that has already been the subject of an approved exclusion request are allowed to submit an exclusion request.

Further, individuals and organizations in the United States will not be precluded from submitting a request for exclusion of a product even though an exclusion request submitted for that product by another requester or that requester was denied or is no longer valid.

Objections to submitted exclusion requests. The regulations provide for any individual and organization in the United States to file objections to steel or aluminum exclusion requests, but DOC will only consider information directly related to the submitted exclusion request that is the subject of the objection.

All objections to submitted exclusion requests must be submitted electronically within 30 days after the related exclusion request is posted.

Relevant review period. Exclusion Requests will be open for public review after being posted to the federal rulemaking portal. During the initial 30 days, US parties may file objections to the exclusion request. After this initial 30 day period, approximately 60 days will be necessary for complete review and vetting of the exclusion request and any related objection filings. The total processing time for exclusion requests is estimated at 90 days.

Approved exclusions will be effective five business days after publication of the responses in regulations.gov. Starting on that date, importers will be considered to be excluded.

Exclusions will generally be approved for one year.

4. How might other countries respond or retaliate to U.S. exports?

It is almost certain that other countries will retaliate by imposing new tariffs on U.S. exports. Because the Trump Administration invited other countries to negotiate with it for potential exception from the tariffs, it is possible that countries will, at least in the short term, hold their fire on retaliatory tariffs until they have gauged the efficacy and desirability of a negotiated solution. The calculus will likely be different for each country, but many will seek to impose tariffs that inflict the maximum impact on the U.S. while imposing the least impact on their own domestic economies and citizens.

5. Can Congress or the WTO overturn the tariff order?

Congress can, but this is unlikely. The tariff order is promulgated pursuant to statutory authority Congress has previously granted to the U.S. President. That statutory authority does not provide any special review mechanism for Congress. To overturn the tariff order, Congress would have to pass a new law to either strip the President of this authority generally or to specifically roll back this tariff. Regardless, the new law would require veto-proof 2/3 majorities in both houses of Congress, otherwise the President could simply veto the new law.

The WTO cannot overturn the tariff order, but it can rule that the new tariff is illegal under applicable international trade law. If the WTO so rules, then other WTO countries are permitted to impose retaliatory tariffs on U.S. products without the risk that those retaliatory tariffs themselves would be deemed illegal.

6. What countries will be impacted the hardest by the steel and aluminum tariff? As the largest steel producer, how will China be impacted?

The top 5 steel exporting countries to the U.S. are Canada, Brazil, South Korea, Mexico, and Russia.¹ While Canada and Mexico are excluded from the tariffs at this time, they will nonetheless feel the impact on their exports to non-U.S. markets as countries potentially shift their exports from the U.S. to third country markets.

China will, of course, feel these impacts too, but, at 2.9% of the U.S. steel market, China's participation in the U.S. steel market is significantly less than that of countries such as Canada (16.7%) and Russia (8.1%), or even countries such as Japan (4.9%) or Germany (3.7%).²

7. Besides Mexico and Canada, are other countries negotiating for exceptions? How will the overall tariff rate be affected if more countries are exempt from the order?

Several other countries have already indicated they hope and/or expect to negotiate for the exclusion of their products from the new tariff. It is unclear whether the Trump Administration's negotiating positions will permit many countries to consider negotiated exclusions feasible.

While it is possible that the amount of the tariff rate will be reevaluated if a significant number of countries are excluded, this would depend on the market circumstances in light of those exclusions.

¹ Reuters, "Factbox: Top steel exporters to the United States" March 2, 2018, <https://www.reuters.com/article/us-usa-trade-factbox/factbox-top-steel-exporters-to-the-united-states-idUSKCN1GE10I>.

² *Id.*

8. The 232 investigation was initiated to determine if imports of steel and aluminum pose a threat to national security. What is the national security issue that the administration is concerned about?

DOC issued reports that discuss the identified national security threat. In sum, the reports state that the vitality of the U.S. domestic steel and aluminum industries is essential to ensure a domestic ability to produce the steel and aluminum needed both for critical infrastructure and for defense applications, and that high volumes of low-priced imports threaten that vitality.

DOC also determined that the overall health of the US economy is impacted by the imports of steel and aluminum. The reports are available online here: <https://www.commerce.gov/news/press-releases/2018/02/secretary-ross-releases-steel-and-aluminum-232-reports-coordination>.

9. Is there a time limit for the tariffs or a procedure to remove them?

There is not a set time limit for the tariffs. The President may remove them at any time he deems the national security of the U.S. no longer threatened by the imports.

10. Although there is an exception for imports from Canada and Mexico, what would happen if NAFTA negotiations fall through? Is it possible that imports from Canada and Mexico would be subject to the tariff order?

The Trump Administration has closely linked the NAFTA negotiations with the current exceptions for Canada and Mexico. It is likely the Trump Administration would consider rescinding the exceptions if it feels insufficient progress is being made in the NAFTA negotiations.