

December 30, 2021

Tariff rate quota system to “replace” Section 232 Tariffs on eligible steel and aluminum products from the EU as of January 1, 2022: what importers need to know to maximize chances for substantial duty savings

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On October 31, 2021, the Department of Commerce announced that the United States had reached an agreement with the European Union (“EU”) to “replace” or “supplement” the 25% steel and 10% aluminum tariffs imposed by the United States under Section 232 of the Trade Expansion Act of 1962 with a new Tariff Rate Quota (“TRQ”) system as of January 1, 2022. Under the TRQ, imports of eligible EU steel and aluminum products will enter free of Section 232 tariffs until the quota is reached, after which they will again be subject to the tariffs unless the product has been granted an exclusion pursuant to the Section 232 exclusion request process, which will remain in place. Products entered under an exclusion will not count toward the quota amount. Thus, the TRQ presents an opportunity for substantial duty savings for those importers that meet its eligibility requirements.

The TRQ will be administered on a quarterly basis for steel and a semi-annual basis for aluminum, and the overall annual quota amount will be allocated among 54 steel quota categories and 16 aluminum quota categories identified by Harmonized Tariff Schedule (“HTS”) code, with an amount within each category allocated for each EU member state based upon historical levels. The quota categories and the unofficial, anticipated annual quota allotments identified by quota category and allocated among the EU member states are available on the Commerce Department’s Bureau of Industry and Security (“BIS”) websites for **steel** and for **aluminum**. Once finalized, the official quota allotments will be published in US Customs and Border Protection’s (“CBP”) **Quota Bulletins**. Quota utilization will be published in **CBP's Commodity Status Reports**.

The TRQ will be allocated to individual importers on a first come, first served basis, with the quota being divided proportionately among importers at quota opening in the event the TRQ fills immediately on the first day of the quarter (steel) or mid-year (aluminum). Once the quota from each EU member state for each quota category is filled, subsequent imports will be subject to the Section 232 tariffs of 25% for steel and 10% for aluminum (unless an exclusion has been granted) until a new TRQ amount opens at the beginning of the next quarter (steel) or mid-year (aluminum). Assuming the quotas will fill, this creates an incentive to import early in the quarter or half, as applicable, in order to have the best chance of obtaining Section 232 duty-free entry under the TRQ. Note that regular CBP duties are not affected by this TRQ system and must continue to be paid.

Importantly, for a steel or aluminum product to be eligible for entry free of Section 232 duties under the TRQ, the product must have a country of origin of a current EU member state (e.g. products with a UK country of origin are not eligible). In addition, for steel products, the country of "melt and pour" must also be a current EU member state (e.g. steel melted and poured in China but substantially transformed into a finished steel product in Germany is not eligible). Under relevant CBP regulations, the country of "melt and pour" is: "the original location where the raw steel is: (A) First produced in a steel-making furnace in a liquid state; and then (B) Poured into its first solid shape. The first solid state can take the form of either a semi-finished product (slab, billets or ingots) or a finished steel mill product." It is critical that importers maintain evidence of eligibility. This typically includes a mill test certificate in the case of steel. For aluminum, a Certificate of Analysis is required.

Additional details regarding the TRQs for steel and aluminum include the following:

Steel:

- Aggregate annual import volume under the TRQ set at 3.3 MMT, divided amongst 54 product categories
- TRQ allotment based on historical data from 2015-2017
- Quarterly allotments with a 4% roll over potential into the next administration quarter (1st quarter rollover to 3rd quarter; 2nd quarter rollover to 4th quarter; 4th quarter rollover to 2023 1st quarter)
- Imports of steel products with current Section 232 exclusions do not count against the TRQ
- Steel exclusions granted and utilized in U.S. fiscal year 2021 are automatically extended through December 31, 2023 (i.e. no need to reapply)

Aluminum:

- Unwrought aluminum (2 product categories): aggregate annual import volume under the TRQ set at 18 TMT
- Semi-finished (wrought) aluminum (14 product categories): aggregate annual import volume under the TRQ set at 366 TMT
- TRQ allotment based on historical data from 2018-2019, except for aluminum foil where 2021 annualized data will be utilized
- Semi-annual allotments with no more than 60% of quantity permitted in first half of the year
- Must provide a Certificate of Analysis

Recommendations:

Here are a few suggestions from the Dentons Cohen & Grigsby ("DCG") Trade Group on how to manage the import of EU steel and aluminum products under the TRQ:

- Continue to review and consider submission of Section 232 exclusion and extension requests for those steel and aluminum products that are not available in the United States in a sufficient amount or of a sufficient quality on a timely basis. If successful, such exclusions and extensions avoid payment of Section 232 tariffs without the need to worry about whether eligible imports will be entered before the TRQ is filled. The DCG Trade Group has successfully assisted companies in securing such exclusion and extension requests.
- To the extent possible, import eligible products early in the quota period to maximize the chances of entering products before the quota is filled (assuming that the quotas will fill). Importers may benefit from the use of bonded warehouses to better manage the timing of customs clearance such that eligible products are withdrawn and entered on the first day of the quota period (i.e. first day of the quarter (steel) or half (aluminum)).
- Recordkeeping and compliance will remain at the forefront, as the country of origin of the steel and aluminum products must be substantiated, as well as the country of "melt and pour" in the case of steel products.

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