



March 28, 2022

The Honorable Gina M. Raimondo
Secretary
Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

Submitted Electronically via www.regulations.gov

RE: Section 232 Exclusion Process (Docket ID BIS-2021-0042)

Dear Secretary Raimondo:

The Coalition of American Metal Manufacturers and Users (“CAMMU” or “the Coalition”) is pleased to offer the following comments on the Department of Commerce’s (“Department”) Bureau of Industry and Security (BIS)’s request for public comments on the Section 232 exclusions process.¹ CAMMU is a broad organization of U.S. businesses and trade associations representing over 30,000 companies and over one million American workers in the manufacturing sector and the downstream supply chains of a wide variety of industries including aerospace, agriculture, appliance, automotive, consumer goods, construction, defense, electrical, food equipment, medical, and recreational industries, among others.²

To summarize our comments on the exclusion process, American manufacturers need a guarantee from objectors (domestic steel and aluminum producers) to deliver, not a willingness to produce steel or aluminum in the U.S. at a future date to be determined. After all, American manufacturers cannot make a component, industrial equipment, or a finished product based on a promise to deliver. American manufacturers need steel and aluminum, preferably produced domestically. Unfortunately, since the imposition of the Section 232 tariffs, domestic producers have yet to demonstrate the ability in practice or theory to deliver the products in the quantity and to the quality needed by America’s domestic manufacturers using steel and aluminum.

¹ Request for Public Comments on the Section 232 Exclusions Process, 87 Federal Register 7777 (February 10, 2022) <https://www.federalregister.gov/documents/2022/02/10/2022-02870/request-for-public-comments-on-the-section-232-exclusions-process>.

² CAMMU members include: Associated Builders and Contractors, Industrial Fasteners Institute, the Hands-On Science Partnership, the National Tooling & Machining Association, North American Association of Food Equipment Manufacturers, the Precision Machined Products Association, and the Precision Metalforming Association

As of January 20, 2022, Commerce has received 382,000 exclusion requests and made determinations on more than 369,000 requests. Despite Commerce initially estimating that the total processing time for exclusion requests would be 90 days, about 13,000 requests are still pending. Manufacturers describe a “rebuttal black hole” as a cause for repeated frustration, especially after certain entities repeatedly file objections without merit causing delays for both BIS staff and in the supply of steel and aluminum products. While average processing times have improved over the past months, many of our members continue to report significant delays and lack of responses to their requests.

As of January 2022, according to Commerce, the average time that an applicant must wait from submission to decision in cases in which no objections were filed was 43 days for exclusion requests. These delays were compounded in instances in which one or more objections are filed. The average time from submission to decision in cases where an objection was filed was 98 days for exclusion requests. These aggregate numbers, however, overlook the impacts of significantly longer delays for individual exclusion requests, including those reported by CAMMU members, that significantly impact smaller manufacturers that rely on consistent and timely access to source materials.

The delays in obtaining exclusion request decisions have caused significant problems for American manufacturers. To remain competitive, manufacturers need to be able to reliably determine the price and delivery time for vital inputs like steel and aluminum.

Because tariffs are only applied to the raw materials, counterparts and competitors can export to the U.S. finished products tariff-free and at lower prices than quoted by American manufacturers, who must pay the tariff on steel and aluminum raw material inputs. In addition, the tariffs allow the protected domestic steel and aluminum industries to raise their prices, making the U.S. an island of high steel and aluminum prices, further disadvantaging American manufacturers, even if they only purchase these products from domestic producers.

Before providing information on the specific questions in the BIS request for information, it is important to note that CAMMU believes the very nature of the Commerce Department’s Section 232 Tariff Exclusion Process discriminates and disadvantages America’s small and medium sized manufacturers who often lack the purchasing power to buy “mill-direct.” Domestic steel producers in particular will typically not quote an order below a set quantity, effectively *excluding* the thousands of U.S. businesses who make up the foundation of this country’s supply chains – from defense and medical to aerospace, agriculture, and automotive. The exclusion process shuts out America’s small business who buy from service centers and other intermediaries by only permitting the “importer of record” to file a request, forcing these small businesses to go through an intermediary or rely upon a metals supplier to submit a request on their behalf.

1) How to reduce the volume of submission errors and rejected filings in the Section 232 Exclusions Portal.

The simplest and best way to reduce the volume of submission errors and rejected filings is to increase the use of General Approved Exclusions (GAEs), as few manufacturers report a current benefit based on materials most commonly used.

Due to the supply shortage of steel in particular, steel suppliers are often sending to a manufacturer the steel available but often in different lengths or cut shorter. This can lead to an exclusion no longer applying. BIS should permit a range of dimensions that allow flexibility should a supplier substitute a similar product under a different HTS code or alterations to their dimensions that fall outside the scope of the exclusion and still not domestically available per the exclusion request.

CAMMU's manufacturing associations have reported that their members have found some improvement in the process and fewer technical rejections/error submissions as the process evolved and applauded the good faith efforts undertaken by BIS to improve the system.

(2) How to address the time for processing of exclusion requests, including but not limited to reducing length or type of attachments.

CAMMU does not support the limitation of documentation to support an exclusion request or a rebuttal. BIS should allow requesters and those submitting a rebuttal to present a full and factual account of their efforts to source domestically, including providing evidence of lack of responsiveness for repeated request for quotes from domestic producers who continue to file objections.

Manufacturers keep detailed records, including written electronic communication from domestic steel objectors, confirming they cannot provide the material, or the quantity, and must be allowed the due process to provide this data to Commerce to rebut the false claims made by domestic producers.

CAMMU lacks insight into the process at BIS and the causes for delays. We are concerned about the extended delays for requesters that occurred toward the end of 2021 stretching for more than four months in some cases, experienced until recently when BIS began again releasing decisions. Prior to these delays, a requester could expect a typical response from BIS with an objection and rebuttal in approximately 90-days. American manufacturers need stability so they can plan purchases and account for shipping delays. Most importantly, a stable timeline from BIS on exclusions requests is essential so that domestic manufacturers can time the import of their products accordingly. Delays without explanation or information, as recently experienced by manufacturers who belong to our manufacturing associations, compound an already disruptive environment.

If BIS plans to again pause public release of decisions as it has done until recently, the agency should notify the public as to the cause and length of this delay.

(3) Requiring public summaries of any confidential business information in exclusion requests and objections, similar to the existing requirement for rebuttal and surrebuttals.

Manufacturers who file a request for exclusions are not typically entities that utilize the Confidential Business Information (CBI) option, as the request form already requires a company to provide information about the specific steel or aluminum product it requires for an operation. The objectors are often privy to more details than those made public in a filing, as industrial steel and aluminum users would have already approached a domestic steel or aluminum supplier to request a quote for the materials subject to the exclusion request. Similarly, a competitor is likely facing the same supply challenges because it uses the same product that is the subject of the exclusion request.

CAMMU is concerned that an objector could use CBI as an excuse to not justify the rationale for its objection, whether the objector has the technical ability to produce the product, and its current production of that item at the exact quality specifications as the requested exclusion.

(4) Requiring public disclosure of delivery times on the Exclusion Request and Objection Forms.

CAMMU supports the public disclosure of delivery times on the Exclusion Request and Objection Forms. Currently, because “reasonably available” can only be proven after the fact, domestic steel/aluminum suppliers may still fail to deliver a product on time, or simply choose not to respond to a request from a manufacturer for a quote. This creates problems for American steel- and aluminum-using manufacturers who then do not have the raw material needed to produce parts to meet their customers’ deadlines. CAMMU also asks that an objector certify that any such claims as to delivery time is specific to the exact requirements of that exclusion request and that any variations to an “acceptable substitute” be certified to meet the specific requirements of the requesting party and not a general replacement material.

For many years, including prior to the 2018 imposition of the Section 232 tariffs on imports of steel and aluminum, some domestic steel and aluminum producers would claim that they have the capacity or ability to manufacture a requested product but then would not actually have the ability or willingness to supply the product in the quantity, quality, dimensions, or chemical makeup required by the customer. BIS should require that an objector certify that it not only has the ability to manufacture the specific product, but also certify that it can do so within a specified time period. The ability to manufacture a product is not the same as availability. American steel- and aluminum-using manufacturers need the quantity and quality of materials from suppliers required and in a predictable time period.

In addition, metals suppliers often must be qualified by the original equipment manufacturer (OEM) before the manufacturing of highly engineered products for safety-critical industries can use them. A substitute is not merely a substitute. For many medical device manufacturers, it can take up to eighteen months to certify a new metal or supplier for a product intended to save a human life – pandemic or not. There is a difference between whether the product can be sourced domestically and if our members’ customers will allow them to substitute suppliers, often based on tolerances and quality. Even if the customer is willing to consider a substitution, there are

substantial costs in qualifying a new supplier, and more importantly, time – often a manufacturer, a physician, or a patient, cannot afford to wait.

(5) Requiring recent (i.e., from the last quarter or 90 days) evidence supporting claims made in a Request or Objection.

The Exclusion Request Form currently asks about the “last 2 years” when asking if the Exclusion Requestor has attempted to qualify or purchase the described product. A potential challenge with a strict 90-day period is fluctuation in market conditions, but also more importantly, non-responsiveness of a domestic steel or aluminum producer. A refusal to quote made 120 days prior to an exclusion request is likely the same response as in 90 days. BIS may also find information beyond the 90-day window useful as it determines which products to classify as a GAE but showing a history of a lack of availability of that product.

A pattern of domestic producers providing no responses, refusing to provide a quote for a product, or refusing an order based on quantities requested, whether occurring in the previous quarter or previous year are all relevant factual evidence that there is no domestic availability for that product. Demonstrating that domestic suppliers show a continued pattern of unwillingness to respond to and fulfill order requests from a requestor is an important factual component in an exclusion request – and remains a real-time problem for American manufacturers.

Many of CAMMU’s manufacturing members are small, family-owned businesses and report that domestic steel suppliers often are unwilling to quote or fulfill orders due to the requests for a quote not meeting their minimum order requirements. This refusal based on quantity discriminates against this country’s small manufacturers while allowing an objector to state that it has the material available – but are just unwilling to sell it in a small quantity.

(6) Streamlining the online forms or otherwise reducing administrative burden; and

(7) assessing the General Approved Exclusions' (GAEs) criteria and identification of specific products.

CAMMU requests a more transparent process for how BIS determines which products to remove from the GAE list. Is the removal based on a domestic producer request made through a system other than the 232 portal? Helping provide more transparency and understanding for that process will help U.S. steel- and aluminum-using manufacturers. In addition, as previously mentioned, BIS should incorporate the use of ranges for dimensions of material across HTS codes when necessary. This would simplify the process for BIS while also providing GAEs for these commonly used imports.

Thank you for your consideration and please contact me if you have any questions or need additional information.

Sincerely,



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On behalf of:

Associated Builders and Contractors
Hands-On Science Partnership
Industrial Fasteners Institute
National Tooling & Machining Association
North American Association of Food Equipment Manufacturers
Precision Machined Products Association
Precision Metalforming Association