



October 12, 2023

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–2023–0021)

Dear Secretary Raimondo:

The Coalition of American Metal Manufacturers and Users (“CAMMU” or “the Coalition”) appreciates the opportunity to submit comments on the Department of Commerce’s (“Department”) Bureau of Industry and Security (BIS)’s proposed changes to the Section 232 exclusions process. 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 using steel, aluminum, and other metals to supply a wide variety of industries including aerospace, agriculture, appliance, automotive, consumer goods, construction, defense, electrical, food equipment, medical, and recreational industries, among others.¹

American manufacturers need steel and aluminum—preferably produced domestically—that is immediately available to make finished products and successfully compete with overseas suppliers. CAMMU maintains its belief that the 232 tariffs have been ineffective, have not achieved their stated goals, and have caused injury to downstream manufacturers, placing them at a global disadvantage. The 232 exclusion process, from the start, disadvantaged small businesses, and was effectively broken. CAMMU welcomes these efforts by BIS to help make improvements to the exclusion process, absent removing the tariffs in their entirety on our national security allies.

The current system governing Section 232 tariff exclusions thus sharply disadvantages and discriminates against America’s small- and medium-sized steel- and aluminum-using manufacturers. U.S. companies lacking the purchasing power to buy “mill-direct” are subject to the availability of product in an artificially constrained marketplace, leaving them in a position of vulnerability in a highly competitive global economy in which overseas competitors operate free

¹ 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.

from similar constraints. Yet, the continued viability of America’s steel- and aluminum-using manufacturers is not only essential to sustaining a healthy domestic steel industry, but also to maintaining a strong U.S. manufacturing supply chain, which in itself is an essential ingredient of U.S. national security.

CAMMU therefore supports the efforts of BIS to instill much-needed transparency and improved functionality into the Section 232 exclusions process, while cautioning that any continued ambiguity in the form of new guidance will likely lead to continued exploitation by upstream producers. Below, CAMMU offers our members’ perspective on the four changes to the tariff exclusions process that have been put forward by BIS.

1. Changes to the criteria for General Accepted Exclusions (GAEs):

CAMMU strongly supports the proposal to change the criteria for reviewing GAE objections. Member companies that have applied for exclusions in good faith in hopes of securing access to much-needed product inputs that are not immediately and sufficiently available in the U.S. marketplace have seen those efforts negated by pro-forma or thinly stated “objections” from third-party entities. By moving away from criteria based largely on whether a particular HTSUS code has received objections to one based on a considered analysis of the merit behind those substantive objections, BIS would make an appropriate improvement to a system that to date has all too frequently been exploited by third parties.

In addition, CAMMU, in principle, supports an assessment approach based on considering the number of objections filed against a GAE, provided that they are “substantiated” objections. However, we note two potential concerns with this aspect of the BIS assessment. First, CAMMU members have seen numerous objectors in the past who simply copy and paste their response from one form to another without any unique commentary specific to that exclusion request. It will be critical to ensure that, having once been “substantiated” by BIS, an identical objection cannot be repeated across product categories or applied to other HTSUS codes without undertaking a similar exercise to determine the relevance of that objection to additional GAEs. Second, on a related note, the effectiveness of the approach as a solution to the current abuse of the process will depend entirely on the meaning of the BIS definition for “substantiated objections,” i.e., what entity is behind them, what is that entity’s marketplace connection to that product, etc.

On a final note, CAMMU offers a recommendation to further improve this aspect of the process. BIS should allow trade associations to file GAEs on behalf of their industry for widely used products to further expedite and improve efficiency. The small businesses that often rely on secondary markets for their products, as opposed to purchasing “mill direct,” by definition lack the capacity to sort through the exclusion comments process and determine how to effectively rebut or file comments on their behalf—or take valuable time and resources away from core business concerns in order to do so. Certain steel and aluminum products under an HTS category are commonly used by manufacturers yet are still not immediately available from domestic sources in the quantity and quality needed. Allowing trade associations with proven representation of companies occupying given product categories or sectors to file GAEs on behalf of member companies would improve the accuracy and quality of the input that BIS receives from the U.S. manufacturing sector’s many small and medium-sized participants.

This proposed change would help to reduce the volume of objections submitted despite it being the case that “U.S. industry does not produce the products or subproducts in question in a sufficient and reasonably available amount or of a satisfactory quality.”

2. Creation of a General Denied Exclusions (GDEs) process

The creation of what is effectively a new category, General Denied Exclusions, raises a number of questions in terms of process, criteria, and potential impacts. CAMMU strongly urges BIS to consider the following questions if it pursues the inclusion of GDEs within the tariff exclusion regime:

- What is considered a “very high rate” of substantiated objections, i.e., will a specific percentage threshold be put in place?
- Once labeled as such, for how long will a GDE be in place? Given the constant market changes that occur, CAMMU urges that it be no more than one year between reviews.
- Will BIS review the GDE status if several requesters start filing that have not in the past?
- How will BIS determine a changed circumstance on the part of the producer, where they could be idling a plant or reducing the output, making that product not immediately available in sufficient quantity and quality?
- How will BIS allow for an appeal of a GDE, i.e., is there a “cooling off” period or a timeline before one can reapply?
- What determines a “very low likelihood of being approved?”
- How does the BIS real-time criteria of immediately available factor into the “very low likelihood of being approved” category if BIS is relying upon historical data?
- Will BIS review all previous determinations as to whether the product is immediately available, or will BIS wait for a request to pursue this review?
- Will previously denied requests be eligible for consideration prior to placement on GDEs, i.e., will there be a public comment period by HTS code for GDEs?
- How far back in time will BIS be reviewing?
- Will BIS be looking at objections on a company basis, or only by HTS?
- If one company has very few to no objections, but another company has all requests objected, would it result in a GDE for all companies under that HTS?

In addition, it is important to note that markets evolve, and new opportunities appear, particularly in renewable energy, semiconductors, infrastructure, and electric vehicles. As downstream suppliers transition to or seek to enter these markets, their steel and aluminum needs will change, possibly prompting some businesses to need an exclusion for a GDE-listed product. BIS closing the exclusion process to any requests for products listed under a GDE without consideration of a need from a domestic user will not account for changes in market conditions, nor allow American

industry to adapt to new technologies and benefit from expanded opportunities. BIS must factor in these steel and aluminum products and permit an application, even with a GDE in place.

CAMMU appreciates the efforts of BIS to create a GDE process, but strongly urges a thorough consideration of these questions to ensure that the addition of this category enhances, rather than detracts from, the agency's objective to improve performance of the regime.

3. Expansion of certification requirements for exclusion requests

There are a number of existing requirements in place that companies filing exclusion requests must abide by in order to demonstrate the substantive veracity of such requests. BIS now proposes to create an additional requirement that requestor companies certify that, within the 12 months prior to filing the request, they have made "reasonable efforts" to source the product in question from suppliers in the U.S. or, failing that, from one of a list of eligible secondary country sources. Requiring requesters to inquire as to the availability at each of the countries with which the U.S. has an alternative agreement to the 232 in place is an effective denial of application. Expecting a small business to attempt to secure quotes from hundreds of suppliers across over thirty countries is unrealistic and likely an insurmountable burden for the typical downstream manufacturer in the U.S., again tilting the exclusion process away from helping small businesses.

CAMMU's principal suggestion on this front is that BIS recognize and accept that email correspondence should suffice to demonstrate verification. In addition, refusal to issue quotes and non-responsiveness on the part of the supplier after multiple requests should be deemed as the supplier not possessing the ability to manufacture that product. It is the experience of CAMMU members that these types of "non-response responses" are common practice throughout the industry, and it is important that BIS recognizes and appreciates that a non-response is a valid indication of non-ability to manufacture.

As previously stated, most small manufacturers lack the purchasing power to source their steel from the mills directly, instead turning to service centers or warehouses to fill their steel and aluminum needs. BIS should accept no quotes and no availability responses from these service centers in addition to those from the domestic producers directly as fulfilling the "reasonable efforts."

In addition, CAMMU urges further clarification on what will constitute a "reasonable effort" by requestors.

4. New certification requirements on objection forms

Similar to the above requirements, BIS is proposing that objectors furnish evidence that they have sold a product in question to the requestor company in the last 12 months, ***or*** (emphasis added) that they have engaged in discussions with that of another company regarding the sale of a product in question during the last 12 months.

CAMMU would like to recognize that this proposed change is in response to many past comments by CAMMU and our members that objectors can simply say "we can make that" without any proof. However, the option for an objector to merely demonstrate discussions with a requestor company about a given product is problematic. Based on experience, CAMMU members are

concerned that a domestic mill will be incentivized to engage in prolonged discussions with a requestor company regarding potential product sales in bad faith, i.e., without true intent to fulfill a sale. The goal of such discussions from the supplier's point of view would simply be to delay the process sufficiently to defeat the ability of a requestor to demonstrate inability to find suppliers for a specific product. CAMMU members report that there is a clear difference between a domestic producer's capability and capacity to manufacture a steel or aluminum product, and that producer's actual willingness and ability to immediately (i.e., within 8 weeks) deliver the product.

CAMMU therefore requests that BIS consider the following questions:

- How will BIS handle discussions over product quotes that continue for an extended period of time?
- Similarly, how will BIS account for responses to manufacturer RFQs that are far above market price?
- Regarding the objector company, what is the requirement for the level of company executive in order to certify an objection? How will BIS hold the objector who certifies the objection accountable?

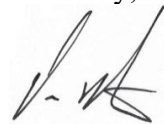
Conclusion

CAMMU thanks BIS for proposing some needed changes to the Section 232 steel and aluminum exclusion process that could help bring balance and simplicity to a process difficult and daunting to navigate for many small businesses.

While CAMMU members continue to strongly object to the ongoing imposition of the Section 232 steel tariff regime, the comments and questions raised above reflect how important appropriate resolution of the many problems inherent to the Section 232 tariff exclusion process are for U.S. small and medium-sized steel- and aluminum-using manufacturers. In the interest of safeguarding the nation's manufacturing supply chain, we urge your thoughtful attention to these important matters.

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

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