

January 24, 2022

Bureau of Industry and Security
Department of Commerce
1401 Constitution Avenue NW
Washington, D.C. 20230

Dear Mr. Crace,

Attached please find the Aluminum Association's comments in response to the Federal Register notice requesting input on OMB Control Number 0694-0141, Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions From and Objections to the Section 232 National Security Adjustments of Imports of Steel and Aluminum.

The Aluminum Association represents the full value chain of aluminum industry manufacturers and their employees in the United States, ranging from primary production to value-added products to recycling. On behalf of the Association and its member companies, we appreciate the opportunity to provide these comments to the Bureau of Industry and Security.

Please let me know if you have questions or need additional information.

Respectfully submitted,



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Policy Analytics Associate
The Aluminum Association

REE OMB Control Number. 06940141

Bureau of Industry and Security: Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Procedures for Submitting Rebuttals and Surrebuttals Requests for Exclusions From and Objections to the Section 232 National Security Adjustments of Imports of Steel and Aluminum

Docket ID: Not Applicable

January 24 , 2022

Introduction

The Aluminum Association welcomes this opportunity to comment on the information collection process for filing Section 232 exclusion requests, objections, rebuttals to objections, and surrebuttals to rebuttals. The exclusion process is an important component of the Section 232 duty regime, and ensuring that the process is effective is critical to the program's success. The Aluminum Association appreciates the Administration's continued focus on the success of U.S. workers in the aluminum industry and supports the Administration's goal of ensuring that the U.S. continues to enjoy the benefits of high quality, sustainable aluminum production for years to come.

The Aluminum Association represents aluminum manufacturing and jobs in the United States, spanning the entire value chain from primary and secondary production, to semi-fabricated products, to recycling. The Association is responsible for developing industry standards, business intelligence, sustainability research, and industry expertise for its member companies, policymakers, and the public.

The Association recognizes that the Department has made changes in the exclusion process over time. However, our members continue to have significant concerns and believe that considerable reforms to the Section 232 exclusion process are necessary. As long as the Section 232 tariffs remain in place, the Department should ensure that it has an exclusion process that is effective. With these comments, the Association hopes to provide the Department with some further refinements to the process. Fundamentally, we encourage the Department to consider how best to shape the exclusion process to serve the underlying purpose of the Section 232 program and to benefit domestic producers of aluminum and aluminum products as defined by the Executive Order.

(1) Exclusion objectors, i.e. the U.S. domestic producers, should be able to object based on excessive quantities requested as granted exclusion requests are well beyond actual market needs

The Department has revised its exclusion methodology to require requestors to certify that volumes requested are consistent with business needs. Unfortunately, the inflated volumes in exclusion requests have continued. For example, while the volume of granted exclusions declined slightly year-over-year in 2021, the Commerce Department granted exclusions for aluminum can sheet (products classified under Harmonized Tariff Schedule subheadings 7606.12.3045 and 7606.12.3055) totaling approximately 7.5 billion lbs in 2021. The total size of the U.S. can sheet market was an estimated 4.5 billion pounds in 2021 – and was overwhelmingly supplied by U.S. producers (roughly 90 percent). These trends are reflected in other product segments as well.

When aluminum importers can request, and are granted, large volumes of exclusions that well exceed actual need or do not reflect market realities, then they are, for all intents and purposes, incentivized to import into the U.S. market without any restraints - thereby undermining the purpose of the Section 232 measures. This is compounded when financial speculators obtain such exclusions, further distorting market dynamics and undercutting the core goal of ensuring a healthy aluminum industry in the United States that is in a position to support our nation's security.

Procedures for Submitting Rebuttals/Surrebuttals to Section 232 Exclusion Requests
Aluminum Association's Comments

Department officials told the Government Accountability Office (GAO)² that "it would be inappropriate for Commerce to tell individual firms how much of a product they may need, or how much of a product a domestic producer could supply to any particular firm, and they do not have the resources to do so." (GAO, p. 16). The Aluminum Association acknowledges this position and submits that a minimal amount of additional scrutiny may be all that is necessary to address this concern. Now, the importer must only submit additional information justifying its exclusion volumes upon a request of the agency. Instead, the requestor could be required to provide that type of justification automatically for any exclusion where the volume requested exceeds last year's volume of imports by 10 percent. In this way, the domestic industry would have the opportunity to provide insight to the Department about the validity of the stated rationale for the increased exclusion volumes. For example, if the exclusion requestor suggests that increased market demand requires it to request such greater volumes relative to a prior exclusion request, the U.S. industry would be able to rebut that argument with information showing that the requestor's increased volume is excessive.

In addition, Department officials informed the GAO that allegations of violations of the certification requirements currently are handled by the Department of Commerce's Office of Inspector General (IG). As noted by the GAO, it is not apparent how to report potential violations to the IG. Currently, it appears that the Department relies on information included in objections, rebuttals, and surrebuttals. (GAO, p. 19-20). Yet, as explained below, many filed exclusions are not objected to by U.S. producers simply because those producers do not have the capacity to evaluate all of the exclusions that are filed. As such, there should be a clearly defined process for U.S. producers to make complaints about potential exclusion certification violations with the IG. One possibility would be to add a hyperlink on the Section 232 portal that would permit a U.S. producer to submit a challenge of the accuracy of a requestor's certification with the IG.

(2) The eligibility criteria for exclusion requestors should be narrowed to mirror eligibility for objectors and to exclude state-owned enterprises in order to promote fairness and reduce the excessive volume of exclusion requests.

The excessive volume of exclusion requests filed not only over-taxes the Department but also makes it impossible for the domestic industry to respond to every request that warrants one. This is a matter of significant concern in light of the fact that the Department is reliant on objections from one or more domestic producers to subject it to heightened scrutiny in determining whether to grant or deny the request. As noted by the GAO, Commerce approves any request if no domestic producer submitted an objection to it (GAO, p. 9). This imposes substantial administrative and cost burdens on domestic producers. We believe the proposal below would limit the number of exclusion requests, which has become a huge administrative burden for the U.S. domestic producers.

a) Equal Criteria for Exclusion Requestors and Objectors

The Association continues to urge the Department to streamline the process by making the criteria for submitting exclusion requests equally stringent to those for objecting to such a request. As the Association has commented in previous submissions, current Department of Commerce regulations allow any individual or organization "using aluminum articles" identified by the Section 232 Executive Orders and "engaged in business activities in the United States" to submit exclusion requests. This unfortunately leaves open the door for financial speculators, which create no domestic manufacturing jobs, to file disproportionate requests with no goal other than arbitrage of the exclusion process.

Instead, the Department should refuse to accept exclusion requests from, or presume denial of requests by, any entity that is not in some way a manufacturer or processor of the imported metal for which an exclusion is requested. Only requestors that are transforming, processing, or further manufacturing the imported aluminum product should be eligible to request an exclusion. The Metal Service Center Institute's

Procedures for Submitting Rebuttals/Surrebuttals to Section 232 Exclusion Requests
Aluminum Association's Comments

definition for a “[service center](#)” or the Aluminum Association’s definition for a “[producer](#)” could help identify objective parameters that cover aluminum production, processing, and finishing -- or companies that operate metals service centers (facilities that provide first-stage fabrication services like cutting-to-length, slitting, etc.). This should reduce the overall number of exclusion requests filed, in accordance with the number of objections received, and thereby free up Department resources to adjudicate the filed requests more expeditiously.

b) Re-evaluate GAE process to permit more input from domestic industry

The problem of the U.S. industry’s inability to keep pace with the excessive volume of exclusions that are filed is compounded when taking into account Commerce’s method for identifying Generally Approved Exclusions (GAEs). GAEs have been granted for products for which no objection is received. These special exclusion types allow unfettered access to the U.S. market, with no volume limits and without being time bound. The Aluminum Association approves of the concept of GAEs as a way to reduce the volume of exclusions when it is apparent that no US producer has the capability to make a specific type of aluminum product. However, given the unrestricted nature of this exclusion type, it is essential that the Department is confident this is in fact the case and market conditions warrant granting of a GAE. In the process as currently arranged, Commerce cannot have this level of confidence because the vast array of exclusion filers against whom only a limited number of objectors can act does not permit the Department to draw any kind of meaningful conclusion from the lack of objection. Commerce should redefine who can file an exclusion in order to allow for the effective operation of the GAEs, or create a new mechanism to evaluate the question of domestic capability.

Moreover, before establishing any GAEs, the Department should directly solicit the feedback of the U.S. industry. The Department informed the GAO that “they plan to identify additional steel and aluminum products for inclusion as GAEs in subsequent {interim final rules}” (GAO, p.15). As just noted, the Department cannot be sure that the domestic industry actually evaluated the specific request because of the imbalanced process. Therefore, the the Department should not rely on silence from domestic producers in the exclusion process to justify granting GAEs.

Additionally, given the shifting market dynamics, the absence of objections to Section 232 exclusion requests by domestic producers should not, by default, be interpreted to legitimize requestors’ claims of either a lack of domestic capacity or a lack of U.S. production for the products in question. Accordingly, we urge BIS to undertake a wholesale review of the GAEs and to establish a formal process for stakeholders to request a rescission of the GAEs that remain in effect and to participate more directly in the establishment of any new GAEs. We also urge the Department not to grant GAEs without first receiving input from domestic manufacturers and/or representatives of such manufacturers like the Aluminum Association. The first GAEs were implemented without any opportunity for public comment or input.

c) Deny Requests Involving Products from Non-Market Economy Countries and State-Owned Enterprises

We again strongly recommend that the Department establish a presumption of denial for exclusion requests dealing with companies that are state-owned or that are based in designated non-market economies. In its 2018 report, the Commerce Department stated that “a major cause of the recent decline in the U.S. aluminum industry is the rapid increase in production” in China and acknowledged that China’s massive, state-subsidized overcapacity “suppressed global aluminum prices and flooded into world markets.”¹ Industrial subsidies that have lead to significant overcapacity, if left unchecked, threaten the

¹ U.S. Department of Commerce, *The Effect of Imports of Aluminum on the National Security: An Investigation Conducted Under Section 232 of the Trade Expansion Act of 1962, As Amended* (Washington, D.C.: Department of Commerce, 2018).

Procedures for Submitting Rebuttals/Surrebuttals to Section 232 Exclusion Requests
Aluminum Association's Comments

security of the U.S. aluminum industry and all aluminum producers based in market economies. State-owned companies and companies based in non-market economies have an unfair advantage over U.S. producers and should not be able to compound this advantage by receiving tariff exclusion.² If an exclusion involving such merchandise is to be granted by the Department, it should only be done in an extraordinary circumstance. Further, such an approach will reduce significantly the burden on many domestic producers to address numerous exclusion requests and will strengthen the security of U.S. industry. Additional fields on the exclusion request or rebuttal would be appropriate to capture relevant information to determine whether merchandise identified in an exclusion request would be supplied by a state-owned enterprise.

As a reminder, as we are sure the Department is already aware, the Association and its members stand ready to help the Department as it looks to develop and deploy additional policy tools, in conjunction with other market economies, to tackle the common problem of subsidized Chinese overcapacity.

(3) The department should clearly identify the amount of time that will likely be required to decide exclusion requests.

The December GAO report recommended clear communication from the Department on the time it takes to decide exclusion requests, noting that only 64% of exclusion requests with objections met established timeliness criteria (GAO, p. 27). The Association supports this recommendation due to constantly shifting market dynamics making the realities of a long-pending exclusion request entirely different from the time a request is filed to a final decision.

The Association has made several recommendations to enhance the Department's work in administering the exclusion process. In its December 2021 report, the Government Accountability Office recommended that the Department of Commerce regularly update its public guidance to keep interested parties fully informed of all aspects of the agency's operation of exclusion processes.³ The Association and its members strongly support this recommendation and encourage the Department to include its proposed revisions in its public guidance.

If you have any questions, please reach out to us at policy@aluminum.org or email me directly at jrichard@aluminum.org.

Accessed January 24, 2022.

https://www.commerce.gov/sites/default/files/the_effect_of_imports_of_aluminum_on_the_national_security_-_with_redactions_-_20180117.pdf

² Nor should 232 exclusions be granted where a producer is subject to other trade action administered by the Department, such as AD/CVD orders or Section 301 tariffs, designed to address the market-distorting effects of unfair state subsidies.

³ U.S. Government Accountability Office, *Steel and Aluminum Tariffs: Commerce Should Update Public Guidance to Reflect Changes in the Exclusion Process*, [GAO-22-104564](#) (Washington, D.C.: Government Accountability Office, 2021). Accessed January 24, 2022.