

US Steel and Aluminum Industry Players: US Department of Commerce Wants Your Input on Section 232 Exclusion Process

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Section 232 of the *Trade Expansion Act of 1962*, as amended, gives the president – acting on the recommendation of the Secretary of Commerce – the authority to take actions to adjust imports of goods found to be imported into the United States in such quantities or under such circumstances as to threaten to impair the national security. On May 26, 2020, the US Department of Commerce Bureau of Industry and Security (BIS) [opened](#) a public comment period on the Section 232 exclusion process, including regarding factors considered by agency officials when rendering decisions on exclusion petitions, the efficiency and transparency of the current process, and potential revisions to the current process.

US steel and aluminum companies should take advantage of this comment period to proactively engage with BIS and provide the agency with a full picture of how the current process has and has not worked for them as officials consider how to amend the review process. **Comments are due to BIS by July 10, 2020.**

By way of background, in March 2018, following an investigation led by the Commerce Department, US President Donald Trump issued proclamations establishing a 25% tariff on covered steel imports and 10% tariff on covered aluminum imports. Since then, several countries have been carved out of the tariffs, though a few are instead subject to import limits known as quotas. BIS subsequently set up a process under which importers of these products could petition for exclusions allowing requested products, in set quantities, to be imported duty free or, as appropriate, above quota limits. Domestic producers can “object” to petitions and provide the agency with information on their production capabilities to show there is sufficient US domestic production of the product at issue.

Nearly one year after unveiling a stand-alone [platform](#) for the submission of exclusion requests, BIS is requesting comments from the public on the exclusion process. Specifically, the agency has asked for “public comment on the appropriateness of the factors considered, and the efficiency and transparency of the process employed, in rendering decisions on requests for exclusions from the tariffs and quotas imposed on imports of steel and aluminum articles.” Companies that are especially active in submitting petitions to or objecting against petitions on the docket have the chance to raise issues they are facing both with the technical aspects of the submission process, but also the underlying criteria considered by the agency as it considers requests.

Perhaps more critically, BIS has also requested comments on potential revisions to the exclusion process, including, but not limited to:

- Issuing blanket one-year approvals on exclusions for products that have not faced any objections during a set period;
- Conversely, issuing blanket denials on exclusions for products that have received 100 percent objection rates and have never been granted during a set period;
- Limiting the time windows during which all product-specific exclusion requests could be submitted/decided; or
- Requiring requestors to provide a “good faith showing” of the need for the product (for example, by requiring a statement of refusal to supply the product from a domestic producer).

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