March 28, 2022

Matthew S. Borman  
Deputy Assistant Secretary for Export Administration  
Bureau of Industry and Security  
Department of Commerce  
1401 Constitution Avenue, NW  
Washington, DC 20230

RE:  Section 232 Exclusions Process [BIS-2021-0042]

Dear Mr. Borman:

In response to a request\(^1\) from the Department of Commerce (DOC), the American Iron and Steel Institute (AISI) is pleased to submit the following comments on the Section 232 product exclusions process on steel imports. AISI serves as the voice of the American steel industry in the public policy arena and advances the case for steel in the marketplace as the preferred material of choice. AISI’s membership is comprised of integrated and electric arc furnace steelmakers, and associate members who are suppliers to or customers of the steel industry.

I. Introduction

In 2018, the president imposed tariffs and quotas on steel imports under Section 232 of the Trade Expansion Act of 1962 following a finding by the DOC that “present quantities and circumstances of steel imports” threaten to impair U.S. national security. The Section 232 trade measures have been an effective tool to prevent further surges in steel imports that would threaten U.S. economic and national security, and U.S. steelmakers and workers benefited from the resulting improved market conditions. Domestic steel producers have invested billions of dollars in new and upgraded facilities in recent years, which has allowed formerly laid-off workers to be rehired, new workers to be hired and the domestic industry to re-enter critical markets it had previously ceded to unfairly traded steel imports.

The Biden administration has been clear in its Section 232 negotiations with trading partners over the past year that preserving the long-term viability of the domestic steel industry and its workers is a critical priority and that any alternative arrangements must address the serious threat posed by governmental market distorting policies and practices that have resulted in significant global steel overcapacity. The agreement with the European Union (EU) reached in October replaces the Section 232 tariffs with a tariff-rate quota (TRQ) allowing 3.3 million metric tons of volume annually of steel imports tariff-free access to the U.S. market before imports would be subject to the 25 percent tariff. The DOC also extended certain product exclusions for two years and imports of excluded steel products from the EU do not count against its TRQ. While similar TRQ deals were reached with Japan in early February and the United Kingdom (UK) last week, importantly, those arrangements do count against the TRQs import volumes entered under product exclusions for Japanese and UK steel products.

Given this further narrowing of the coverage of Section 232 steel tariffs in recent months, a new approach to the product exclusion process is necessary to maintain the effectiveness of the Section 232 program. The product exclusions process was originally instituted to address narrow circumstances where a steel product is not “produced in the United States in a sufficient and reasonably available amount or of a satisfactory quality” or other “specific national security considerations.” Now, as the remedy continues to evolve such that more steel imports are available duty-free, a more focused approach should be implemented in the exclusions process to address shortcomings that could otherwise further weaken the Section 232 remedy and adversely impact domestic steelmakers and its workers.

This submission will focus on three primary areas: (1) specific policy recommendations to implement a new and targeted approach to address deficiencies in the current product exclusions process; (2) the need to implement an immediate review process for the General Approved Exclusions (GAEs) system; and (3) operational enhancements for the current Section 232 product exclusions portal.

II. Policy Recommendations

As part of President Biden’s proclamation on December 27, 2021, implementing the TRQ on steel imports from the EU, the president directed the Secretary of Commerce to seek public comment on the exclusions process, with a particular focus on “the responsiveness… to market demand and enhanced consultation with United States firms and labor organizations.” Domestic steelmakers still believe that product

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exclusions for steel imports must remain requestor-specific, so each exclusion should continue to be for limited use by the U.S. entity that requested it. As the administration looks to make modifications to the exclusions process, the domestic steel industry recommends several potential enhancements, with a focus on both reducing the administrative burden while also acknowledging that exclusions should be granted infrequently, particularly in light of recent alternative arrangements that have gone into place on steel imports from key trading partners.

a. Sourcing Imports from Countries Subject to Alternative Arrangements

In recent months, there have been substantial modifications to the Section 232 program on steel imports, as agreements have been reached to replace the 25 percent tariffs with TRQs on imports from the EU, Japan and the UK. These changes are in addition to modifications made in May 2019 exempting steel imports from Canada and Mexico from Section 232 tariffs, and quota agreements reached in 2018 for steel imports from Argentina, Brazil and South Korea, and a separate agreement with Australia in 2018 exempting its steel product exports from Section 232 tariffs.

Collectively, steel imports from some of the largest exporters of steel products to the U.S. are now eligible for tariff-free access to the U.S. market, which limits the need for additional product exclusions from the Section 232 tariffs. Accordingly, before considering any new product exclusion request, DOC should require evidence that the requested product cannot be sourced either from U.S. producers or from any of the countries with an alternative arrangement to the tariffs. Requestors should be required to provide detailed documentation that the exclusion can only be obtained from a country subject to the tariffs and that a good faith effort was conducted to check availability from both domestic producers and from all countries not subject to the tariffs. Absent this showing, DOC should decline to process and post the exclusion request.

b. Docket Process for Communications

A central goal of the president’s direction for a new public comment process is the need for enhanced consultations with domestic companies and labor organizations in the product exclusions process. One way to achieve this goal is to implement a public docket process that would allow for communication between DOC and requestors or objectors for each exclusion request. This process could be similar to the process employed by DOC in trade remedy investigations and would help increase transparency in the exclusions process, while also allowing for confidential business information (CBI) to be transmitted through the secure portal. Since most exclusion requests are granted without objection, this process would likely only apply to a small
subset of all requests. The creation of a new public docket process would also allow for DOC to request additional evidence from interested parties, such as public disclosure of delivery times.

c. Annual Window for Review of Product Exclusions

Since the portal was introduced in 2019, DOC has publicly posted over 230,000 steel product exclusion requests, which require diligent monitoring by U.S. steelmakers to ensure exclusions requested cannot be sourced domestically. This requires domestic steel producers to expend significant resources to review each exclusion requested, despite most exclusion requests receiving no objections during the process. This process also creates a considerable challenge for DOC to process hundreds of thousands of exclusion requests. One way to reduce the burden on all parties involved in the process would be the implementation of a limited period each year where exclusions can be requested for the following calendar year.

For instance, requestors could have a 60-day window in the spring to file exclusion requests for the following calendar year. DOC would then review and process these requests and post these requests over the summer, grouping by Harmonized Tariff Schedule (HTS) code, for review by domestic steelmakers. Objections would take place in late summer for a limited time window and then any additional adjudications (rebuttals, surrebuttals, etc.) would occur during a final review period over the fall. All decisions would then be posted prior to the end of the year and be effective for the following year.

This process would significantly reduce many redundancies of the current process, where exclusion requests for a single product may be made dozens of times throughout the year by different importers/users, requiring constant examination by domestic producers. Under an annual window scheme, domestic producers would review the exclusion requests en masse during a single period of time and would only expend resources during a limited window each year.

d. Restrict Duplicative or Previously-Denied Exclusions

The product exclusions process was originally intended to allow for tariff exclusions only in the rare instances when domestic availability was either limited or nonexistent. Instead, the process has become a highly burdensome one, where hundreds of requests are processed each day, many of which are virtually identical to previously submitted requests. These duplicative requests create an unnecessary burden on all parties involved, including domestic steelmakers and DOC officials tasked with the review process. In order to reduce the number of exclusion requests filed, DOC should not
permit requestors to submit requests that are duplicative or virtually identical except for trivial distinctions. Similarly, if DOC has denied an exclusion request, the same requestor should be required to wait at least one year from the date of the decision memo before resubmitting the request for consideration.

e. Presumption of Domestic Availability When Requestors Fail to File Rebuttal

The rebuttal and surrebuttal process implemented by DOC in September 2018 created the opportunity for additional dialogue between requestors and objectors, where requestors could refute evidence offered by objectors, particularly on claims of domestic availability. Nonetheless, there have been a number of cases where, despite the domestic industry objecting to a request, the requestor submitted no rebuttal. In many of these cases, despite the requestor leaving the domestic industry’s objection effectively unchallenged, DOC still granted the requested exclusions. Going forward, if a requestor does not attempt to refute claims made by objectors through the rebuttal process, then the exclusion request should be denied. Particularly as importers now have additional options to import steel tariff-free under numerous alternative arrangements, no product exclusion should be granted where the requestor did not respond to domestic industry objections.

f. Specification Requests

The domestic steel industry has recently seen many instances of product exclusion requests with unrealistic or misleading specifications that are designed to include dimensions just beyond commercial availability in the United States. Generally, these situations arise when the specifications, such as width, are outside traditional capabilities and thus prevent domestic steelmakers from filing objections. In many cases, domestic industry believes that the user may be later slitting the imported product to narrower widths that are in fact available from domestic producers. To address this abuse, where a requested width is greater than what is available domestically, the requestor should be required to certify that it will not cut the material to narrower widths. DOC should not grant exclusions in these situations absent such certifications, so as to prevent such manipulation of the exclusions process.

g. Exclusions Should Not Be Granted Based on Minor Discrepancies That Are Not Metallurgically Significant

It is our understanding that DOC has increasingly relied on subject matter experts to evaluate and adjudicate certain discrepancies between exclusion requests and objections. These experts are tasked with reviewing minor differences in product
characteristics, like specifications or chemical compositions, between exclusion requests and objections filed by different parties, and then determining if these differences are grounds for approving or denying an exclusion request. However, in many cases minor differences in product specifications or chemistries may not be significant in terms of the ability of the steel product to meet a particular commercial need. Competing steel products can achieve the same or similar mechanical properties through different production processes, and can be controlled for example through chemical composition or through processing and heat treatment. While each company employs slightly different methodologies for such production processes, the properties of the end products and applications may be the same. The fact that there may be minor differences should not be grounds for approving or denying exclusion requests without an in-depth analysis of their metallurgical properties and DOC should consult with interested parties in these situations, rather relying on outside evaluators who may or may not have the necessary expertise to make these complex judgments.

h. **Treatment of Confidential Business Information Submitted in Portal**

The Section 232 portal currently treats confidential business information (CBI) differently for exclusion requests and objections, on the one hand compared to rebuttals and surrebuttals on the other. Companies filing exclusion requests or objections are not currently able to file CBI material directly with DOC in the portal and instead must request follow-up, where DOC will “request CBI only if it is needed in the review process.” However, those filing rebuttals or surrebuttals can submit CBI directly in the portal and must provide public versions of their supporting CBI documentation. This divergence should be remedied to allow for those companies filing exclusion requests or objections to also submit CBI information directly in the portal with public summaries included as well. This will ensure that confidential information that requestors or objectors would like considered during the process will be reviewed, regardless of whether DOC follows up with the party.

### III. General Approved Exclusions

The domestic industry continues to urge that all General Approved Exclusions (GAEs) be eliminated, as the current GAE system allows for no recourse for domestic steelmakers that may produce a product subject to a GAE. Based on our analysis, steel imports entering the U.S. market covered by at least 25 GAEs are produced in significant volumes by domestic steelmakers and since no product exclusion request is required for products falling into these categories, there is no ability for domestic steel

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producers to alert DOC that the product is produced domestically. The September 2018 modifications to the exclusion process included an expedited review for requests that did not receive objections, which should be adequate to ensure truly undisputed exclusion requests can be handled expeditiously.

In addition, we continue to emphasize that simply because a domestic steelmaker did not object to an exclusion request in the past does not predict current or future market considerations and should not hamper the ability of domestic producers to adapt to changing market conditions. There are many reasons why members of the domestic industry may not have objected to a given request that are unrelated to domestic production capabilities, including duplicative requests, minimal volume requested, misclassifications in the requests, requests in metric sizes, pending trials, and other commercial reasons.

The GAE system as it currently stands, e.g., without any review mechanism, discourages investment by steelmakers in new production capabilities that would better serve the domestic market, since the GAEs are essentially ceding entire product segments to foreign competitors. Without the ability to object to exclusion requests in the GAE categories, U.S. steelmakers are unable to reenter market segments they may have previously lost to foreign dumped and subsidized imports.

We are also concerned that the list of remaining products subject to GAEs is overly broad and goes beyond the intention of creating a more efficient and streamlined process for granting exclusion requests. The exclusions process is intended to be narrowly focused, requiring a detailed product description alongside a specific HTS code. But the GAEs are based on broad HTS categories that may capture more products than were described in the original exclusion requests to which the domestic industry did not object. For example, while an exclusion request may have been narrowly tailored to a small volume of a proprietary grade of steel, a GAE that includes all products that fit within the same HTS category as the proprietary grade is granting an exclusion to a much broader range of products, even though those products were not intended in the original request. As a result, steel products that were never intended to be excluded from the Section 232 remedy have been entering the U.S. market remedy-free for the past year.

It is imperative that a fresh approach be taken to rectify the current product exclusions process by immediately suspending the remaining 82 steel GAEs until a proper review of each category of excluded products can take place. The current system creates a loophole that undermines the effectiveness of the Section 232 program and we implore DOC to implement a formal rulemaking process, separate from the existing exclusions
system, that will provide domestic steelmakers the ability to comment on which specific products and HTS codes should be included in a modified GAE system.

IV. Portal Enhancements

Since the current Section 232 product exclusions portal began operating in June 2019, AISI has advocated for several enhancements to its functionality that would benefit all users, including those requesting product exclusions and objectors. We appreciate the efforts DOC has taken over the last several years to improve the portal process, but certain aspects continue to present challenges for users, particularly domestic producers, who must monitor hundreds of exclusion requests posted each day. While our policy recommendations above aim to reduce redundant and unnecessary exclusion requests in the first place, these minor modifications to the portal could be implemented quickly and would not require further consultation with interested parties.

Given the significant volume of exclusions requested for steel imports compared to aluminum imports over the past four years, establishing separate steel and aluminum portals would enhance the usability of the portal. It is crucial that DOC provide as much pertinent information as possible on the main page of the portal and by creating separate steel and aluminum portals, it would allow for DOC to increase the number of searchable fields present. For instance, if DOC removed “Product” field, which refers to either steel or aluminum only, it could replace it with “Product Class,” which refers to the classification of steel products, such as Carbon and Alloy Flat or Stainless, which could greatly improve the ability of reviewers to narrow the number posted exclusions in which they must review.

DOC should also add a searchable field where users can search for keywords throughout an exclusion request, which would help further streamline the review process. The ability of users to run customized reports of exclusion requests and providing an augmented tracking capability so users can better track submissions would improve the operability of the system, while also reducing the resource burden of those reviewing the portal on a daily basis.

Finally, it would be beneficial for the portal to list the exact due date for objections and other submissions, instead of days remaining. For example, objections must be submitted no more than 30 days after the exclusion has been posted. However, for exclusions posted on any given day, the portal shows that just 29 days remain for objections. This is confusing and it would provide significant clarity if the portal was modified to give the exact deadline date for objections and other submissions.
IV. Conclusion

The domestic steel industry appreciates the steps the Biden administration has taken in recent months to ensure the long-term viability of the Section 232 program on steel imports. The original intention of the product exclusions process was to ensure that steel users in the United States could source steel products that were not produced domestically in sufficient quantities or quality to meet demand. However, as we have seen over the past four years, the vast majority of volume granted for exclusions has not been used, which suggests that requestors have significantly overestimated import needs.

As recent modifications have replaced the tariffs with TRQs, DOC must now take a new approach to the product exclusions process that recognizes the need for exclusions from the Section 232 remedy has been dramatically reduced. Our submission outlines several policy recommendations that would enhance the product exclusions process, with an eye towards both reducing administrative burden on all users of the system, while also acknowledging that exclusions should be granted infrequently given the recent alternative arrangements that have gone into place.

We also urge you to institute an immediate review of the GAE program, as it continues to undermine the Section 232 remedy without a mechanism for domestic stakeholder participation and encourage you to implement minor enhancements to the portal in the interim, which will improve the usability for all interested parties.

Thank you for the opportunity to provide feedback to DOC on potential modifications to the Section 232 product exclusions process. We appreciate the continued efforts by you and your team to ensure the process is fair and equitable, while also ensuring the continued effectiveness of the Section 232 remedy on steel imports.

Sincerely,

Kevin M. Dempsey
President and Chief Executive Officer