



September 2020

STEEL AND ALUMINUM TARIFFS

Commerce Should Improve Its Exclusion Request Process and Economic Impact Reviews

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Why GAO Did This Study

Citing national security concerns over excess global supply of steel and aluminum, in March 2018 the President placed tariffs on the import of some products using Section 232 of the Trade Expansion Act of 1962. At the President's direction, Commerce established a process to provide relief, or exclusion, from the tariffs.

GAO was asked to review Commerce's Section 232 tariff exclusion process. This report assesses (1) the process Commerce uses to decide exclusion requests and to what degree it has accepted submitted requests; (2) what criteria and factors affected Commerce's decisions; (3) how often Commerce met established guidelines for the timely resolution of requests; and (4) the extent to which Commerce reviewed the impacts of the tariffs on steel and aluminum imports, as directed.

GAO analyzed Commerce's Bureau of Industry and Security and International Trade Administration records from March 2018 to November 2019, as well as data from the U.S. Census Bureau and the Department of Homeland Security, and spoke with agency officials.

What GAO Recommends

GAO recommends that Commerce (1) identify, analyze, and respond to factors in the process that may cause submission errors; (2) take steps to improve timeliness of exclusion request decisions and address the backlog; and (3) assign responsibility for reviewing the tariffs' impact and document the results. Commerce concurred with all three recommendations.

View [GAO-20-517](#). For more information, contact Kimberly Gianopoulos at (202) 512-8612 or GianopoulosK@gao.gov.

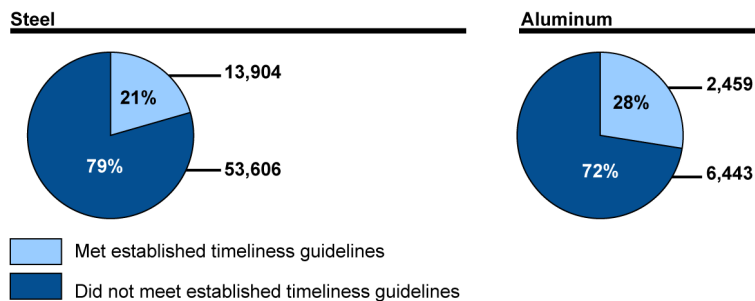
What GAO Found

The Department of Commerce (Commerce) has a four-phase process to review companies' requests to be excluded from having to pay Section 232 steel and aluminum tariffs. Commerce ensures an exclusion request is complete, accepts public input, evaluates materials submitted, and issues a final decision. Between March 2018 and November 2019, Commerce received over 106,000 requests; it rejected over 19,000 of them prior to decision due to incorrect or incomplete information. Although rejections may delay relief for requesters and can increase work for Commerce, the agency has not identified, analyzed, or taken steps to fully address the causes of these submission errors.

In deciding exclusion requests, Commerce examines objections from steel and aluminum producers to find whether the requested products are reasonably available domestically in a sufficient amount. Commerce may also decide exclusion requests based on national security issues, but has not done so. While Commerce approved two-thirds of exclusion requests, it most often denied requests that had technical errors or where a domestic producer had objected.

Commerce did not decide about three quarters of requests within its established timeliness guidelines, as shown in the figure, taking more than a year to decide 841 requests. Commerce took steps to improve timeliness, such as streamlining the review process for some requests and creating a new submission website, but continues not to meet guidelines and had a backlog of 28,000 requests as of November 2019. Until Commerce takes additional steps, companies will continue to encounter delays in obtaining relief.

Most Steel and Aluminum Exclusion Decisions Did Not Meet the Department of Commerce's Established Timeliness Guidelines from March 2018 to November 2019



Source: GAO analysis of Regulations.gov data. | GAO-20-517

Commerce has not documented the results from any reviews of the tariffs' impacts or assigned responsibility for conducting regular reviews. GAO found evidence of changes in U.S. steel and aluminum imports and markets. For example, imports covered by the tariffs declined after an initial surge and prices dropped after significant increases in earlier years. Evaluating whether the tariffs have achieved the intended goals and how they affect downstream sectors requires more in-depth economic analysis. Without assigning responsibility for conducting regular reviews and documenting the results, Commerce may be unable to consistently assess if adjustments to the tariffs are needed.

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Abbreviations

BLS	Bureau of Labor Statistics
BIS	Bureau of Industry and Security
Commerce	Department of Commerce
CBP	Customs and Border Protection
DHS	Department of Homeland Security
HTS	Harmonized Tariff Schedule
ITA	International Trade Administration

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September 15, 2020

Congressional Requesters

Steel and aluminum are critical to the nation’s defense, required for infrastructure, and used widely in consumer, commercial, and industrial products, according to the Department of Commerce (Commerce). Citing concerns over excess global supply of these products, in April 2017 the Secretary of Commerce initiated investigations into the national security impacts of steel and aluminum imports under Section 232 of the Trade Expansion Act of 1962 (Section 232).¹ Commerce found from the investigations that, among other things, excess global supply contributes to the weakening of U.S. steel and aluminum industries due to increased competition from foreign exporters. In March 2018, in the interest of national security under Section 232, the President placed tariffs on some imported steel and aluminum articles (products) to protect domestic producers.² The President also authorized Commerce to provide relief, or exclusion, from these tariffs for U.S. steel and aluminum importers in certain circumstances.

You asked us to review the process Commerce uses to decide exclusion requests for steel or aluminum products from Section 232 tariffs (exclusion requests). In this report, we assess (1) the process Commerce uses to decide exclusion requests and to what degree it accepted submitted requests; (2) what criteria and factors affected Commerce’s decisions; (3) how often Commerce met established guidelines for the timely resolution of exclusion requests; and (4) the extent to which Commerce reviewed the impacts of the tariffs on steel and aluminum imports, as directed.

¹The Trade Expansion Act of 1962, Pub. L. No. 87-794, Title II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862). The President has also imposed quantitative limits on imports of steel and aluminum from certain countries due to these Section 232 investigations, and Commerce may grant exclusion from these quotas.

²For the purposes of this report, “domestic producer” refers to a company that manufactures steel or aluminum products in the United States. HTS codes specifically listed in the proclamations identify these steel and aluminum products. Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018) and Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018).

To address these objectives, we reviewed Commerce's policies, plans, and related documents, and conducted interviews with agency officials to identify the process and criteria that Commerce uses to decide exclusion requests. We compiled available data from Commerce to generate statistics on various aspects of the process. These data include information for exclusion requests submitted from March 19, 2018, to June 12, 2019, via Regulations.gov, the website Commerce used to accept requests for exclusion, and nonpublic agency records.³ We analyzed data on the status of each request, for instance, whether the request was pending or decided, as of November 18, 2019. We also analyzed objections, rebuttals, and surrebuttals posted in response to each exclusion request submitted before November 18, 2019. We found these data obtained from Regulations.gov and Commerce were sufficiently reliable for generating statistics on various aspects of exclusion request process. We did not analyze exclusion requests Commerce had processed using its new online Section 232 Exclusion Portal (exclusion portal), which it launched in June 2019, since at the time of our review Commerce had not posted enough decisions on the exclusion portal to form an analyzable sample. We then compared statistics on processing times with Commerce's established timeliness guidelines to determine the extent to which Commerce's decisions met those guidelines. We also spoke with agency officials and reviewed agency documents to identify factors that have affected the timeliness of decisions.

In addition, we spoke with officials from the Department of Homeland Security's (DHS) Customs and Border Protection (CBP) to determine how they verified information related to the imported products' tariff classification and excluded the imports from or refunded the duties, on steel and aluminum products. We examined trade statistics from the U.S. Census Bureau as well as data from the Bureau of Labor Statistics (BLS) to determine what, if any, changes in steel and aluminum import trends occurred after the imposition of the Section 232 steel and aluminum

³Commerce used Regulations.gov, a pre-existing public comment system, to receive most exclusion requests and related information. The federal government established Regulations.gov to allow the public to find and submit comments on federal rules and other documents that the Federal Register publishes and opens for comment. Commerce used Regulations.gov for exclusion requests from March 19, 2018, through June 12, 2019. As of June 13, 2019, Commerce launched a custom-built replacement website to handle all exclusion requests filed on or after that date.

tariffs.⁴ Finally, we examined Commerce documentation and conducted interviews with agency officials to determine the extent to which Commerce had reviewed the impact of the tariffs. For a more detailed description of our scope and methodology, see appendix I.

We conducted this performance audit from March 2019 to September 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Under Section 232, the Secretary of Commerce can initiate an investigation upon request of the head of any department or agency, application of an interested party, or the Secretary's own motion, to determine the effects on national security of particular imports. Upon receiving such a request or application, the Secretary shall "immediately initiate an appropriate investigation" of the subject imports.⁵ After conducting the investigation, the Secretary must submit a report to the President on the investigation's findings and any recommendations. If the findings include a determination that imports threaten to impair national security, the Secretary may advise the President to take action, including imposing tariffs to adjust import levels.⁶

In April 2017, the Secretary of Commerce initiated investigations under Section 232 into the effects of imported steel and aluminum on national security. Commerce's Bureau of Industry and Security (BIS) publicly

⁴Commerce's Office of the Inspector General has released products examining the timeliness and completion status of tariff exclusion requests as well as certain communications by Commerce department officials. For additional information, see Final Memorandum No. OIG-19-017-M, *One Year Later—A Look at the Timeliness and Completion Status of Section 232 Product Exclusion Requests*, and OIG-20-003-M, *Management Alert: Certain Communications by Department Officials Suggest Improper Influence in the Section 232 Exclusion Request Review Process*.

⁵19 U.S.C. § 1862(b)(1)(A).

⁶According to the Congressional Research Service (CRS), prior to these steel and aluminum investigations, Commerce initiated 26 Section 232 investigations, with the first such investigation occurring in 1962. Commerce has made a positive determination of a national security threat on 11 investigations, and the President has taken action eight times, most recently in 1986 by imposing tariffs on the imports of machine tools, according to CRS reporting.

released the results of these investigations in February 2018. In March 2018, the President announced the results of the investigations.⁷ The investigations found that (1) steel is important and aluminum is essential to U.S. national security, (2) current import levels were adversely impacting the economic welfare of the U.S. steel and aluminum industries, and (3) a global excess of both steel and aluminum capacity was a contributing factor to a weakened U.S. economy.

The global steel and aluminum industries have long been in a state of overcapacity, which, according to Commerce, has contributed to the weakening of the U.S. steel and aluminum industries. Commerce reported that imports of steel and aluminum have increased relative to levels in 2010. Trade data presented in the Commerce investigations indicate that in 2016, U.S. imports of steel were nearly four times that of exports by weight, and imports of select aluminum products were over two times that of exports by value.⁸ Moreover, the world's maximum capacity for sustained crude steelmaking reached about 2.4 billion metric tons in 2016, an increase of 127 percent from the capacity level in 2000, while steel demand grew at a much smaller rate, leading to overcapacity in steelmaking, according to data reported in the Commerce investigations. For aluminum, Commerce's investigation noted that China produced approximately 1 million metric tons of supply above its own needs in 2016, and this excess alone exceeded the total U.S. production of 840,000 metric tons of primary aluminum in that year.⁹

As a result of the investigations, the Secretary recommended that the President take immediate action by adjusting the level of imports through quotas or tariffs on steel and aluminum to keep those U.S. industries

⁷Proclamation No. 9704, 83 Fed. Reg. 11,619 and Proclamation No. 9705, 83 Fed. Reg. 11,625. Under Section 232, within 90 days of receiving the Secretary of Commerce's report finding that products are being imported into the United States in such quantities or under such circumstances as to threaten to impair the national security, the President shall determine whether he or she concurs with the finding and the nature and duration of the action to adjust imports. 19 U.S.C. § 1862(c)(1)(A).

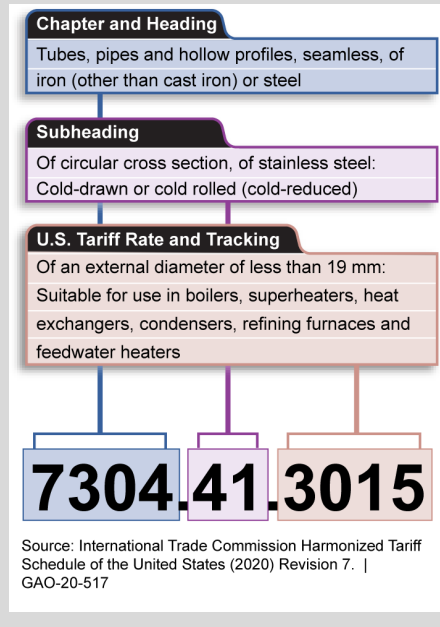
⁸Customs value is the value of imports as appraised by CBP. CBP defines this value as the price actually paid or payable for merchandise excluding U.S. import duties, freight, insurance, and other charges. The U.S. Census Bureau defines the free along ship (FAS) value as the value of exports at the U.S. port based on the transaction price, including inland freight, insurance, and other charges. The value excludes the cost of loading the merchandise aboard the carrier and excludes any further costs.

⁹Primary aluminum is the pure form of the metal in which aluminum is processed and smelted from bauxite.

The Harmonized Tariff Schedule (HTS)

The HTS is a hierarchical system that describes all imported products for duty, quota, and statistical purposes. The schedule classifies goods into broad categories using 4- and 6-digit codes, which it further subdivides into specific categories using 8-digit and 10-digit codes.

Example of an HTS Code from Chapter 73 on Articles of Iron or Steel



financially viable and able to meet national security needs. The recommendations noted that the tariffs or quotas imposed should be sufficient to enable domestic producers to operate at a capacity utilization rate of 80 percent based on 2017 capacity levels.

Through two presidential proclamations released on March 8, 2018, the President placed tariffs of 25 percent on imports of select steel products and of 10 percent on imports of select aluminum products to protect domestic producers.¹⁰ Only a subset of steel and aluminum products, indicated by specific Harmonized Tariff Schedule of the United States (HTS) codes listed in the proclamations, were subject to the new tariffs.¹¹

Five countries account for over 50 percent of the U.S. imports of steel products and five countries account for almost 60 percent of aluminum products covered by the Section 232 tariffs after March 2018. Canada, Mexico, Brazil, South Korea, and Japan were the top five countries from which the U.S. imported steel products covered under the Section 232 tariffs and together they accounted for 54 percent of these imports into the United States from April 2018 through January 2020. Canada, United Arab Emirates, China, Bahrain, and Russia were the top five countries from which the U.S. imported aluminum products covered under the Section 232 tariffs and together they accounted for 59 percent of these imports into the United States from April 2018 through January 2020.

¹⁰Proclamation No. 9704, 83 Fed. Reg. 11,619 and Proclamation No. 9705, 83 Fed. Reg. 11,625. These proclamations provided a means for product-based exclusions and country-based exemptions. Proclamation No. 9704, 83 Fed. Reg. at 11,620-21 and Proclamation No. 9705, 83 Fed. Reg. at 11,626-27. Commerce reviews and grants product-based exclusions to individual requesters for specified products. The United States Trade Representative negotiates country-based exemptions, which will apply to all steel or aluminum imports from the country granted an exemption.

¹¹All goods imported into the United States are classified according to the HTS code. The HTS code, published and maintained by the United States International Trade Commission, provides the legal basis for the classification of every product that enters the United States and the corresponding tariff rate the importer must pay for each product.

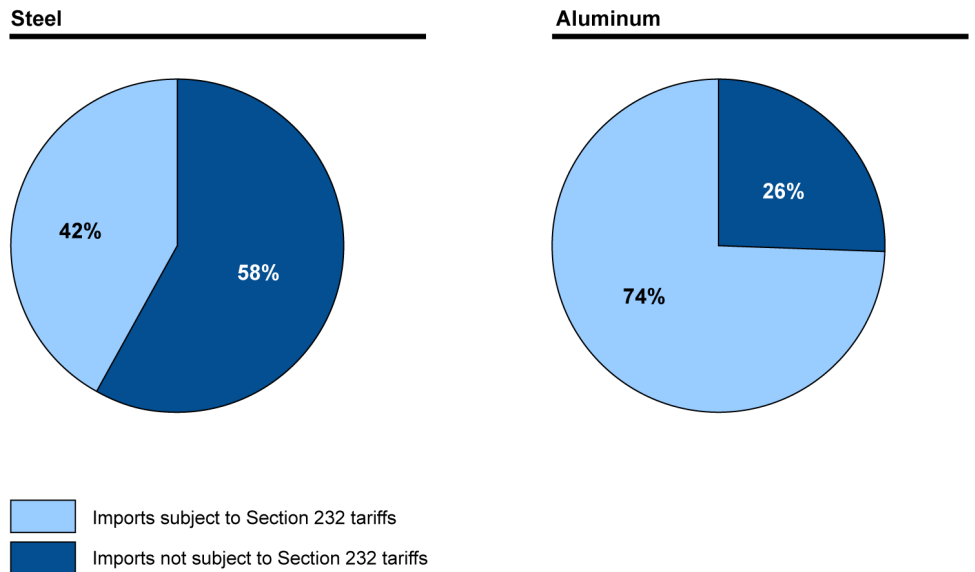
At the 10-digit HTS level, about two-thirds of imported steel product categories¹² and 60 percent of imported aluminum product categories¹³ were subject to Section 232 tariffs. However, in terms of trade values, approximately 42 percent of imported steel value and 74 percent of imported aluminum value were within the scope of the Section 232 tariffs since 2016 (see fig. 1).¹⁴

¹²Presidential Proclamation 9705 applied the tariffs to 742 of the 1,133 categories of steel products (articles) defined at the HTS 10-digit level. These articles are listed under the following subheadings in Chapters 72 or 73 in the HTS schedule: (a) tubes, pipes, and hollow profiles (HTS Codes 7304 or 7306); (b) bars and rods (HTS Codes 7213, 7214, 7215, 7227, or 7228); (c) flat-rolled products (HTS Codes 7208, 7209, 7210, 7211, 7212, 7225, or 7226); (d) products of stainless steel (HTS Codes 7218, 7219, 7220, 7221, 7222, or 7223); (e) wire (HTS Codes 7217 or 7229); (f) ingots, other primary forms and semi-finished products (HTS Codes 7206, 7207, or 7224); (g) tubes and pipes (HTS codes 7305); (h) angles, shapes, and sections (HTS Code 7216, except subheadings of 7216.61.00, 7216.69.00 or 7216.91.00); (i) rails (HTS Code 7302.10); (j) sheet piling (HTS Code 7301.10.00); (k) fish-plates and sole plates (HTS Code 7302.40.00); and (l) other products of iron or steel (HTS Code 7302.90.00). Proclamation 9711 of March 22, 2018, changed the reference to subheading from 7304.10 to 7304.11. 83 Fed. Reg. 13,361 (Mar. 28, 2018), including any subsequent revisions to these HTS classifications.

¹³Presidential Proclamation 9704 applied the tariffs to 101 of the 167 categories of aluminum products (articles) defined at the HTS 10-digit level. These articles are listed under the following subheadings in Chapter 76 of the HTS schedule: (a) unwrought aluminum (HTS Code 7601); (b) bars, rods, and profiles (HTS Code 7604); (c) wire (HTS Code 7605); (d) plate, sheet and strip (7606); (e) foil (HTS Code 7607); (f) tubes and pipes and tube or pipe fitting (HTS Codes 7608 and 7609); and (g) aluminum castings and forgings (HTS Codes 7616.99.51.60 and 7616.99.51.70), including any subsequent revisions to these HTS classifications.

¹⁴Different types of products in these categories constitute products whose first four digits in their 10 digit HTS codes are different. For instance, in this setting, a code that starts with "7206" would be in a different category than one that starts with "7205." Since 2016, imports of steel products not covered by the Section 232 tariffs totaled over \$149 billion, whereas steel imports of products covered by the Section 232 tariffs totaled over \$107 billion. Conversely, since 2016, imports of aluminum products not covered by the Section 232 tariffs totaled over \$220 billion, whereas aluminum imports of products covered by the Section 232 tariffs totaled over \$64 billion.

Figure 1: Percentage of Steel and Aluminum Imports by Value, Subject and Not Subject to the Section 232 Tariffs from January 2016 to January 2020^a



Source: GAO analysis of Census trade statistics. | GAO-20-517

Notes: To determine the total import value of products covered under the Section 232 tariffs, we used U.S. Census import statistics. Customs value is the value of imports as appraised by U.S. Customs and Border Protection. This value is defined as the price actually paid or payable for merchandise excluding U.S. import duties, freight, insurance, and other charges. We calculated the total import value of all products with Harmonized Tariff Schedule (HTS) codes listed in Presidential Proclamations 9704 (for aluminum) and 9705 (for steel). To determine the total import value of products not covered under the Section 232 tariffs, we calculated the total import value for products with HTS codes not in the proclamations mentioned above but listed in Chapters 72, 73 (for steel) and 76 (for aluminum) of the HTS.

^aThese Section 232 tariffs are the tariffs imposed on certain imported steel and aluminum products by the President in Proclamations 9704 and 9705 under the authority of section 232 of the Trade Expansion Act of 1962. See, The Trade Expansion Act of 1962, Pub. L. No. 87-794, Title II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862); Proclamation No. 9704, 83 Fed. Reg. 11,619 (March 15, 2018); and Proclamation No. 9705, 83 Fed. Reg. 11,625 (March 15, 2018).

The presidential proclamations initiating the tariffs required the Secretary of Commerce to continue monitoring steel and aluminum imports and inform the President of any circumstances that, in the Secretary’s opinion, might indicate the need for further action under Section 232.¹⁵ The proclamations also authorized the Secretary to establish a process to provide relief from the tariffs to eligible parties located in the United

¹⁵Proclamation No. 9704, 83 Fed. Reg. 11,619 and Proclamation No. 9705, 83 Fed. Reg. 11,625.

States.¹⁶ With this process, Commerce would accept requests for exclusion from the steel and aluminum tariffs and grant requests for certain eligible products. Commerce began accepting exclusion requests through Regulations.gov on March 19, 2018, and continued accepting them in this manner until June 12, 2019, when it began using the new exclusion portal to accept and process exclusion requests.

Commerce Often Rejects Exclusion Requests Due to Submission Errors

Commerce Has a Four-Phase Process to Review Requests for Tariff Exclusion

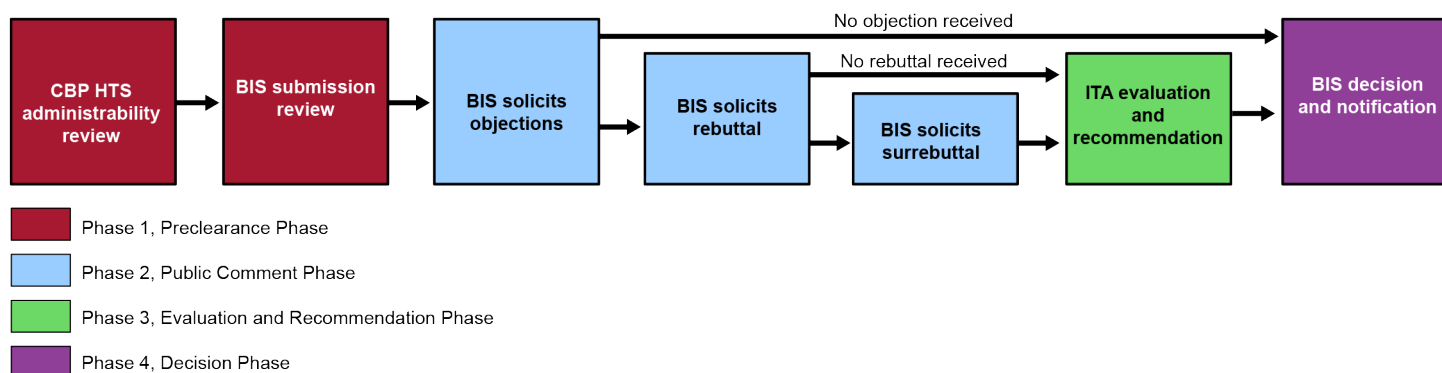
Commerce has a four-phase process that allows individuals or organizations (requesters) located in the United States using affected steel or aluminum in U.S. business activities to submit exclusion requests. The process requires a requester to submit a unique request for each desired steel or aluminum article (for an example of the exclusion request form, see appendix II). Within Commerce, BIS oversees the exclusion process and decides whether to approve or deny each request. BIS is also responsible for reviewing and publicly posting materials related to exclusion requests to Regulations.gov. During the review process, Commerce's International Trade Administration (ITA) is responsible for evaluating all exclusion requests that receive an objection and providing a recommendation to BIS to approve or deny requests. CBP, within DHS, is responsible for determining whether the HTS code provided in the request is accurate.¹⁷ If Commerce approves an exclusion, CBP is responsible for implementing it by excluding the imports from or refunding the duties associated with the Section 232 tariffs, as appropriate, when requested by the importer. Figure 2 illustrates the four phases of the

¹⁶Commerce established additional public guidance for the process including two interim final rules, one published in the Federal Register on March 19, 2018, and the other on September 11, 2018. 83 Fed. Reg. 12,106 (Mar. 19, 2018) and 83 Fed. Reg. 46,026 (Sept. 11, 2018). Commerce codified these interim final rules at 15 C.F.R. Part 705, Supp. No. 1 and No. 2.

¹⁷According to CBP officials, in implementing this responsibility, CBP specifically determines if the physical and chemical information provided in the exclusion request is consistent with the claimed HTS code. In this report, we refer to this activity as determining whether the HTS code is accurate. As a result, a reference to the accuracy of an HTS code in this report means a CBP determination on the consistency of information provided with the claimed HTS code.

review process: preclearance, public comment, evaluation and recommendation, and decision.¹⁸

Figure 2: Department of Commerce’s Process to Decide Section 232 Steel and Aluminum Tariff Exclusion Requests



Legend: BIS = Bureau of Industry and Security, CBP = Customs and Border Protection, HTS = Harmonized Tariff Schedule, ITA = International Trade Administration.
 Source: GAO analysis of September 11, 2018, Interim Final Rule, 83 Fed. Reg. 46,026 (Sept. 11, 2018) and Commerce Documentation. | GAO-20-517

Phase 1: Preclearance

Once a directly affected party¹⁹ submits an exclusion request via Regulations.gov, BIS and CBP review the information in the request to determine whether it is complete and administrable. BIS will first send the request to CBP²⁰ to determine if the HTS code provided accurately matches the specifications of the article described in the request, and is therefore administrable.²¹

¹⁸GAO determined the names of the phases through review of internal agency guidance. Preclearance does not refer to CBP preclearance operations, which is the strategic stationing of CBP law enforcement personnel overseas to inspect travelers prior to boarding U.S.-bound flights.

¹⁹Only directly affected individuals or organizations located in the United States may submit an exclusion request. For the Section 232 steel tariffs, individuals or organizations are “directly affected” if they are using steel in business activities (e.g., construction, manufacturing, or supplying steel product to users) in the United States. For the Section 232 aluminum tariffs, individuals or organizations are “directly affected” if they are using aluminum in business activities (e.g., construction, manufacturing, or supplying aluminum product to users) in the United States. 15 C.F.R. Part 705, Supp. No. 1 and Supp. No. 2.

²⁰BIS and CBP send each other the exclusion requests in batches.

²¹The CBP HTS code review originally occurred in the preclearance phase. Between June 28, 2018, and early February 2019, the code review occurred at the end of the process. It was then moved back to the preclearance phase.

CBP uses a computer program to identify filings that contain HTS code inconsistencies, allowing the agency to determine if the request is administrable or not.²² The program verifies that the dimensions, chemistry, and other physical characteristics of the steel and aluminum products requested for exclusion are consistent with the information associated with the HTS code.²³ If the information is consistent, CBP will determine that the request is administrable and submit the results of its review to BIS. If the information is not consistent, CBP will inform BIS of the reason why the request is not administrable.

If CBP determines the request to be administrable, BIS officials, using internal guidance and checklists, will next determine whether the request contains other errors, such as missing required information. The information required by internal guidance includes the amount, descriptions, specifications, strength, and chemical composition of the requested steel or aluminum product to be imported.²⁴ Other information asked for in the submission form is not required for processing, but according to internal guidance, should be provided if applicable. For example, information on the toughness or additional processing of the requested product is not required unless mentioned in the product information section of the form. BIS either accepts or rejects exclusion requests based both on the assessment of the HTS code and the review of the required information. If BIS rejects exclusion requests, it will not issue a decision. Instead, it will notify the requester of the rejection and the reason for it by email. BIS will accept exclusion requests that have all the correct and required information and advance them to the public comment phase.

Phase 2: Public Comment

The public comment phase begins once BIS posts the accepted exclusion request for public review on Regulations.gov. At this time, domestic steel and aluminum producers may post objections to the

²²CBP initiated the semi-automated review process in July 2018. Prior to this time, CBP manually reviewed all exclusion requests.

²³The CBP semi-automated review program uses a set of 140 conditional statements for steel and 22 conditional statements for aluminum to verify the consistency of the physical characteristics provided with the claimed HTS code. When CBP is unable to process the physical characteristics of the product through automated review, it will manually review these requests.

²⁴BIS staff use internal guidance including checklists to examine the exclusion request for required and substantive information. For example, BIS will check if the requester entered the information that internal guidance requires, such as the chemical composition of the product.

request. Commerce asks objectors to demonstrate that they are capable of fulfilling the steel and aluminum needs of the requester within 8 weeks (for an example of the objection form, see appendix III).

If an exclusion request receives an objection, Commerce provides the requester a rebuttal period to rebut the objector's claims through a separate posting on Regulations.gov. If the requester submits a rebuttal, the objectors may respond to the rebuttal during a surrebuttal period.²⁵ BIS advances an exclusion request that does not receive an objection to the decision phase.

Phase 3: Evaluation and Recommendation

During this phase, BIS takes an original request that received objections and all information obtained in the public comment phase, and submits it to ITA for a technical evaluation. If there is no objection, the request does not go to ITA for an evaluation.²⁶ ITA staff, including analysts and subject matter experts, using checklists and established criteria, then compares the information in the exclusion request form, the objections, the rebuttals, and the surrebuttals, to determine whether the product requested for exclusion is available from a U.S. domestic producer within 8 weeks. If an objector offers a substitute product, subject matter experts may assist in the evaluation, according to ITA officials. ITA evaluators then prepare a draft recommendation memorandum for the exclusion request based on their findings. ITA can recommend that BIS approve, partially approve, or deny a request.²⁷ When complete, ITA forwards the recommendation to BIS to use in the decision phase.²⁸

Phase 4: Decision

BIS officials next review all the materials to either approve or deny the request. Prior to making a decision, however, BIS conducts a national

²⁵Commerce added the rebuttal and surrebuttal periods to the public comment phase as of September 11, 2018. Commerce may also reject objections, rebuttals, and surrebuttals.

²⁶ITA evaluated every exclusion request, regardless of whether the request received an objection, for the 6 months between March 19, 2018, and September 11, 2018.

²⁷After ITA evaluators finish their analyses, the draft recommendation memorandum goes through a two level, team review within ITA, according to Commerce officials. Officials told us that the two level review in ITA is first by a team of agency officials that work with the evaluators to address outstanding questions about the analyses, and then typically by a more senior team, which includes the Deputy Director of the 232 team, that looks for accuracy, consistency, and completeness in analyses. ITA officials told us that the ITA Deputy Assistant Secretary for Policy and Negotiations for Enforcement and Compliance reviews and approves all ITA recommendations.

²⁸BIS considers ITA recommendations as part of the decision-making process, but also considers other information within the request.

security review. BIS may consider national security issues that it or the requester identifies. It may also consider information from other government agencies, such as the Departments of Defense, Homeland Security, State, and the United States Trade Representative.²⁹

BIS officials then provide the Deputy Assistant Secretary for Export Administration with an initial recommendation based on all the available information.³⁰ The Deputy Assistant Secretary reviews the recommendation, and then makes and documents a decision.³¹ Finally, BIS posts a memorandum that summarizes the decision to Regulations.gov. If BIS grants an exclusion, it will notify CBP, which will implement, upon request by the importer, the exclusion from the steel and aluminum tariffs as its imports enter the country.³² The requester must also provide the approval letter to CBP to import any excluded items.³³

Tariff exclusions are effective 5 business days after BIS posts the decision, and are generally valid for 1 year from the signature date on the

²⁹Commerce does not alert executive branch officials when a requester submits an exclusion. Rather, these agencies may consult all exclusion request information publicly available on Regulations.gov and submit information related to national security, as warranted through the interagency collaborative tool MAX.gov. However, BIS does not actively solicit such national security considerations through any interagency process, according to Commerce officials. As of November 18, 2019, Commerce has not issued any decisions based on national security considerations.

³⁰BIS officials present recommendation information in the form of a decision sheet that contains information about the request, information from CBP, and the recommendation from ITA.

³¹BIS uses a range of standardized templates to create the decision memorandum for the request, which indicate whether BIS approved, partially approved, or denied the request. BIS provides a number of reasons for denial decisions including “inaccurate HTS code”, “available domestically”, and “countries not subject to duty.”

³²According to CBP officials, approved exclusion requests grant an importer the right to claim an exclusion of the Section 232 duties but are limited to the specified (1) merchandise, (2) quantity, and (3) time frame. In addition, the importer must be importing products from the country or countries included in the exclusion request. Importers can use the exclusion by providing the exclusion number to CBP upon entry of subject products.

³³Importers apply for retroactive relief through the Post-Summary Correction process, which allows them to make electronic corrections on the summary data presented to CBP. A requester may file a Post-Summary Correction containing the exclusion number in the Importer Additional Declaration Field.

decision.³⁴ A requester, Commerce officials told us, can use the exclusion approval to seek retroactive relief to the date of the original submission, but only if they submitted on or after August 29, 2019. Prior to that period, according to Commerce officials, a requester could only seek retroactive relief to the date BIS publically posted the exclusion request.³⁵ The approval specifies the type and amount of steel or aluminum the requester can import exempt from the Section 232 tariffs from specific countries of origin. At the end of the validity period, or after importing the amount requested for exclusion, the requester cannot claim exclusion on additional imports unless BIS approves a new exclusion request. If BIS denies a request, the requester can make modifications to the form and submit a new request, purchase the steel or aluminum product domestically, or pay the Section 232 tariff on the product.

Commerce Has Not Identified, Analyzed, and Responded to Exclusion Request Rejections Due to Submission Errors

Although Commerce has slightly reduced the number of steel and aluminum exclusion requests rejected for having submission errors, it has not identified, analyzed, and responded to the factors that contribute to these errors. According to our analysis of Commerce data, as of November 18, 2019, individuals or companies submitted 106,155 exclusion requests to Commerce through Regulations.gov. Commerce found errors and rejected 19,261 of these requests, which included 16,631 for steel and 2,630 for aluminum.³⁶ We found the overall rejection rate was 18 percent based on our analysis of Commerce data.

According to Commerce, it rejected, as of January 21, 2020, about three quarters of such requests in Regulations.gov for inaccurate HTS codes, and one quarter for other submission errors such as incomplete documentation. The rejection rate is a concern, according to a Commerce

³⁴Commerce generally will approve exclusions for 1 year from the date of signature or until all excluded product volume is imported. The exclusion may be valid for shorter or longer than 1 year depending on the specifics of the exclusion request. 83 Fed. Reg. at 46,060.

³⁵CBP provides retroactive relief to requesters in the form of a refund of deposited Section 232 duties that requesters must separately apply for from CBP.

³⁶Commerce accepted 85,835 of these requests, which included 75,026 for exclusion from the steel tariff, and 10,809 for exclusion from the aluminum tariff. Requesters withdrew an additional 1,059 requests before Commerce rendered a decision. Individual requesters can withdraw requests by contacting Commerce. For example, according to Commerce officials, a requester may have withdrawn a request prior to the introduction of the new exclusion portal in order to resubmit into the exclusion portal, or may have reached an agreement with an objector and no longer wished to pursue its exclusion request. Additionally, officials told us that BIS has occasionally suggested that a requester withdraw its request after contacting Commerce to state it had filed erroneous information or possessed updated information.

official. Rejections can create additional work for requesters and the agency. After rejecting requests, BIS officials must e-mail requesters to inform them of rejections. Requesters then may contact BIS or CBP with additional questions about the cause of the error by phone or e-mail, make changes to the request, and submit a new request. Submissions made after a rejection are treated as new requests. Requesters are not eligible for retroactive relief from the tariffs from the date of the submission of the first request, but to the submission date of the request that is accepted by Commerce, according to Commerce officials. Commerce documentation shows that some requesters have received multiple rejections for the same requested product. For example, Commerce rejected one requester four times over 16 months for submission errors, both for an inaccurate HTS code and incomplete information. These multiple rejections expend limited agency resources, creates a potential disincentive for companies seeking prompt relief from the tariffs, and may limit the amount of relief a requester receives.

Commerce has taken some steps that improved the process. For instance, according to BIS officials, Commerce introduced a new exclusion portal website designed to replace Regulations.gov to streamline and simplify the exclusion request process.³⁷ Commerce expected the exclusion portal to reduce the number of requests submitted with errors or incomplete information using data validation features that require users to fill out mandatory fields before they submit a request. To further support requesters, BIS officials have discussed the development of a pre-screening tool for HTS codes to test if the requester's HTS code would pass CBP review before requests are submitted, but they have not established a timeline to implement this tool.

Commerce's improvements coincided with, according to Commerce data, a 2 percentage point decline in the overall rejection rate from 18 percent in Regulations.gov to 16 percent in the exclusion portal. At the same time, the proportion of rejected requests that Commerce rejected for non-HTS-related submission errors increased from 27 percent in Regulations.gov to 43 percent in the exclusion portal, while the proportion rejected for

³⁷For example, the exclusion portal allows CBP officials internal access to exclusion requests so that they may conduct their administrability review of HTS codes. Further, when a request submitted to the exclusion portal is rejected, Commerce officials told us they send the requesters an email that details the specific information they must address before resubmission.

inaccurate HTS codes decreased slightly from 73 percent to 72 percent.³⁸ However, in August 2020, Commerce officials told us that submission rejections continue in the exclusion portal due to its “fatal error” programming in the system intended to provide more uniform analysis of requests, which includes the use of a CBP algorithm.

Although Commerce has taken steps to improve the process, it has not yet significantly reduced submission errors. According to Standards for Internal Control in the Federal Government, management should identify, analyze, and respond to risks related to achieving the defined objective, which in this case is to provide relief from tariffs when appropriate.³⁹ Commerce officials told us they keep a record of the reason for each rejected request, but have not used the data on rejections to identify and analyze the reasons for submission errors. Commerce also has not tracked or analyzed the number of resubmissions for requests. By not doing so, Commerce may be unaware of process issues that increase the likelihood that a request will contain submission errors.

Without identifying, analyzing, and responding to the risks contributing to the significant number of rejected requests, Commerce may be unable to improve the process further and reduce submission errors, which could lead to resubmitted requests, additional delays, and administrative burdens. Companies may continue to face uncertainty and delays to their business operations as they work to address issues with their exclusion requests and start the process again, while Commerce staff may face an increased workload as they process some exclusion requests more than once.

³⁸Commerce categorizes data on rejections in the exclusion portal by: (1) rejected for inaccurate HTS code, (2) rejected for submission error, and (3) rejected for both HTS code and submission error. To determine the total rejection rate for submission errors, we summed the rejections for submission error with the rejections for both HTS code and submission error.

³⁹GAO, *Standards for Internal Control in the Federal Government*, [GAO-14-704G](#) (Washington, D.C.: September 10, 2014), 37.

Commerce Approved Most Requests, but Denied Many That Received Objections or Contained Technical Errors

Commerce Decides Exclusion Requests for Imported Products Based on Four Criteria: Availability, Quantity, Quality, and National Security

Presidential proclamations established four criteria that Commerce uses to decide whether to approve or deny exclusion requests. Commerce reviews all submitted documents, including exclusion requests, objections, rebuttals, and surrebuttals, in the evaluation and recommendation phase to determine whether domestic companies can produce the requested steel or aluminum product in a reasonably available and sufficient quantity and of a satisfactory quality.⁴⁰ However, Commerce may also consider national security concerns in the decision phase (see fig. 3).

Figure 3: Department of Commerce’s Criteria Used to Decide Section 232 Steel and Aluminum Tariff Exclusion Requests

Considered during phase 3, evaluation and recommendation phase			Considered only during phase 4, decision phase
Reasonably Available	Sufficient Quantity	Satisfactory Quality	National Security
Is there evidence that domestic producers can produce the requested article within an 8 week period?	Is there evidence of sufficient domestic production to fulfill needs of requester?	Is there evidence of domestic production of satisfactory quality to fulfill needs of requester?	Are there national security concerns pertaining to submitted exclusion requests?

Source: GAO analysis of September 11, 2018, Interim Final Rule, 83 Fed. Reg. 46,026 (Sept. 11, 2018) and Commerce Documentation. | GAO-20-517

Reasonably Available. Commerce may approve an exclusion request if it determines that the requested steel or aluminum product is not reasonably available in the United States within an 8-week period. Commerce will approve this request if domestic producers have not submitted an objection to the request, or if they have and

⁴⁰If Commerce receives no objection to the exclusion request, BIS officials will determine these three criteria are met because no domestic producer has claimed to be able to provide the requested product.

cannot demonstrate the ability to produce the product in the United States within that timeframe. For example, according to Commerce officials, if an objecting domestic producer indicates an ability to produce the requested quantity of steel in 16 weeks, Commerce will generally determine that the product is not reasonably available.

Sufficient Quantity. Commerce may approve a request if it determines that domestic producers cannot produce the requested steel or aluminum product in the United States in a sufficient quantity to fulfill the needs of the requester. Commerce will approve this request if domestic producers have not submitted an objection to the request, or if they have and cannot demonstrate the ability to produce the product in a sufficient quantity. For example, if a company requests exclusion for 100,000 pounds of a steel product and an objecting producer indicates it can only produce 80,000 pounds domestically, Commerce will likely determine that the product is not available in a sufficient quantity. Commerce may also partially approve some exclusions when the objecting producer can produce the desired product at a satisfactory quality within an 8-week period, but is unable to produce the desired quantity. As of November 18, 2019, Commerce had partially approved 149 exclusion requests (less than 1 percent of all exclusion requests approved).

Satisfactory Quality. Commerce may approve a request if it determines that domestic producers cannot produce the requested steel or aluminum product in the United States in a satisfactory quality. Commerce will make this determination if domestic producers have not submitted an objection, or if they have and cannot demonstrate the ability to produce a product with the requester's specifications.⁴¹ For example, if an objector claims to make an identical product, Commerce will compare the specifications listed in the exclusion request, objection, rebuttal, and surrebuttal to verify that they match. If the objector claims it can make a suitable substitute product, Commerce will review the specifications to determine if the proposed substitute product may be functionally substituted for the requested product. Commerce will determine that the producer cannot produce the product in a satisfactory quality if its product specifications do not match the requester's business needs as stated in the request.

⁴¹The requester is required to provide the chemical composition, and may provide further specifications, including the dimensions of the desired steel or aluminum product. The objector may claim to provide either an identical or a substitute product to the requested product. The objector may also provide the specifications of its product, including the chemical composition and dimensions.

National Security. During the decision phase, BIS considers any national security concerns related to the request. According to the September 11, 2018, Interim Final Rule, Commerce may approve an exclusion request for national security considerations when the requested item is needed to make critical items for use in military weapons.⁴² However, as of November 18, 2019, Commerce had not used the national security criterion to decide an exclusion request.

When applying the first three of these criteria, Commerce relies solely on the information requesters and objecting parties provide in the forms they file and does not verify the validity of that information, according to Commerce officials.⁴³ For instance, Commerce does not confirm whether the requester actually requires the quantity requested or a domestic producer can fulfill the quantity it states it is able to provide. Officials said it would be inappropriate for Commerce to tell individual firms how much of a product they need, or how much of a product a domestic producer could supply to any particular firm.

Commerce also exercises discretion when applying its criteria, according to Commerce officials. For instance, ITA officials stated that they would typically recommend approving exclusion requests if objecting parties are unable to produce the requested product within an 8-week period. However, ITA also has the ability to recommend that BIS deny the request if ITA determines that a manufacturing time longer than 8 weeks will reasonably address the needs of the requester. For instance, Commerce officials stated that they take into account the delivery time for the import in the exclusion request when it exceeds the delivery time provided by the objector. We found that Commerce denied 201 steel and 21 aluminum requests even though all of the objecting companies stated it would take longer than 8 weeks to manufacture the product. We also found 6,548 instances where BIS denied the exclusion requests even

⁴²83 Fed. Reg. at 46,062.

⁴³Requesters and objectors certify that the information they provide is complete and correct and that it is a criminal offense to willfully make false statements.

though the objector had indicated it would possibly take longer than 8 weeks to provide the product.⁴⁴

Commerce Approved Most Requests Accepted through Regulations.gov

Commerce had decided or was in the process of deciding more than 85,000 exclusion requests accepted through Regulations.gov as of November 18, 2019. The requests for steel exclusions came from 883 requesters and for aluminum exclusions from 246 requesters. The top five steel requesters submitted almost 29 percent of all steel requests (21,717 of 75,026), while the top five aluminum requesters submitted about 41 percent of all aluminum requests (4,402 of 10,809). The companies that submitted steel requests asked to exclude on average 2.2 million pounds of product, while those that submitted aluminum requests asked to exclude on average 2.9 million pounds of product.

The majority of steel exclusion requests accepted through Regulations.gov, 67 percent, came from two four-digit HTS code groups—tubes, pipes, and hollow profiles; and bars and rods. The majority of aluminum exclusion requests accepted through Regulations.gov, 55 percent, came from one HTS category—plates, sheets, and strip (for more information about the specific HTS code groups or the country of origin for submitted requests, see appendixes IV and V). Commerce approved most of the steel and aluminum requests, but was more likely to deny steel than aluminum requests, as shown in table 1.

⁴⁴For this analysis, we examined the questions in Commerce’s steel and aluminum objection form in which Commerce asked objectors to state the amount of time they would be able to provide or manufacture the article for the requester. For additional information, see questions 1.c, 1.d, 1.e, 1.f, 3.c, and 3.d of the objection form found in appendix III. According to Commerce officials in August 2020, questions 3.c and 3.d are supplemental information collected by BIS for other analytical purposes and are not used in the ITA determination of timeliness.

Table 1: Status of Department of Commerce Decisions on Steel and Aluminum Exclusion Requests Posted to Regulations.gov, as of November 18, 2019

Decision Status	Steel Requests	Percentage	Aluminum Requests	Percentage
Approved	48,670	64.9	7,798	72.2
Partial Approval ^a	105	0.1	44	0.4
Denied	18,733	25.0	1,060	9.8
Subtotal	67,508	90.0	8,902	82.4
Pending	7,516	10.0	1,907	17.6
Total	75,024	100	10,809	100

Source: GAO analysis of Regulations.gov data. | GAO-20-517

^aFor these exclusion requests, the Department of Commerce had approved less than the total amount requested for exclusion.

Commerce Denied Many Requests for Containing Technical Errors

Commerce denied many exclusion requests for having an error in the exclusion request form. Requests denied for containing technical errors included those submitted with inaccurate HTS codes or those for a product from a country where the tariff did not apply.⁴⁵ Commerce more often denied a request for including an error in the original request than for the product being available domestically. We found that Commerce denied 9,164 steel requests and 612 aluminum requests for solely having technical errors. See table 2 for further details on the denied requests and the reason for denial.

⁴⁵Commerce initially denied, rather than rejected, requests that had inaccurate HTS codes and did so at the end of the process after the request had received public comments and gone through evaluation by ITA. From June 28, 2018, to February 2, 2019, the HTS code review took place after the ITA evaluation. These denied requests often went through all phases of the process. As of February 2019, Commerce has adjusted its process so that CBP reviews and it rejects exclusion requests with inaccurate HTS codes in the preclearance phase.

Table 2: Reasons Why the Department of Commerce Denied Section 232 Steel and Aluminum Exclusion Requests, as of November 18, 2019

Reason for Denial	Denied Steel Requests	Percentage	Denied Aluminum Requests	Percentage
Technical error ^a	9,164	48.9	612	57.8
Available domestically	5,980	31.9	408	38.5
Both available domestically and technical error	3,580	19.1	39	3.7
National security	0	0.0	0	0.0
No reason given ^b	9	0.05	0	0.0
Total	18,733	100	1,059	100^c

Source: GAO analysis of Regulations.gov data. | GAO-20-517

^aThe Department of Commerce (Commerce) denied these exclusion requests without making a determination whether domestic producers produced the requested steel or aluminum product in a sufficient and reasonably available quantity and in a satisfactory quality. They include requests submitted with inaccurate Harmonized Tariff Schedule (HTS) codes or requests for a product from a country where the tariff did not apply. After February 2, 2019, Commerce generally rejected requests submitted with inaccurate HTS codes during the preclearance phase. Commerce would not provide a decision on these requests. These rejected requests are not included in the number of denied requests.

^bCommerce's data did not provide a reason for denial for all exclusion requests. As a result, nine of the denied exclusion requests for steel do not have a reason for denial.

^cNumbers may not sum to totals due to rounding.

When Commerce denied requests containing technical errors, it often did so without making a determination whether the domestic producer could produce the requested steel or aluminum product in a sufficient and reasonably available quantity and in a satisfactory quality.⁴⁶ Requesters

⁴⁶According to Commerce officials, the agency cannot accurately evaluate and provide a determination for a submission containing technical errors as corrections to such errors might materially change a submission.

who had their exclusion requests denied for this reason alone had the opportunity to submit a new request and begin the process again.⁴⁷

Commerce Denied Exclusion Requests More Often When Domestic Producers Objected

If Commerce received an objection from a domestic producer, it was more likely to deny the exclusion request. Domestic producers objected to about a quarter of all submitted exclusion requests by claiming they were able to provide the same or a substitute product. Specifically, domestic producers objected to about 27 percent (20,013 of 75,026) of the steel requests and about 25 percent (2,694 of 10,809) of the aluminum requests posted to Regulations.gov.⁴⁸

Most companies submitted objections to exclusion requests for products in a small number of HTS code categories. About 47 percent of objections (9,518 of 20,013) to steel requests were for products in one category: tubes, pipes, and hollow profiles.⁴⁹ About 80 percent of objections (2,160 of 2,694) to aluminum requests were for products in one category: plates, sheets, and strip.⁵⁰ Objectors generally stated that they were able to provide identical products to those requesters were trying to import.

As shown in table 3, Commerce denied 82 percent of the steel requests that received objections and only 14 percent of those that did not. It denied almost 47 percent of the aluminum requests that received an objection and only 7 percent of those that did not.

⁴⁷After receiving a denial for having an inaccurate HTS code, in a subsequent exclusion request, the requester may ask that Commerce provide tariff relief from the date of submission of the first request. According to Commerce officials, this process allows retroactive relief to companies whose request Commerce denied due solely to an inaccurate HTS code, which occurred only during the period in which CBP conducted its review at the very end of the process. As mentioned earlier in the report, Commerce rejected many requests in the preclearance phase for the submission error of not providing an administrable HTS code. These requests did not go through the entire four-phase process and so did not receive an approval or denial decision from Commerce.

⁴⁸Only a small number of companies submitted these objections. Ninety-five domestic companies objected to steel requests, with just five companies submitting about 49 percent of all objections (13,904 of 28,400). Twenty-three domestic companies objected to aluminum requests, with just five companies submitting about 87 percent of all objections (4,005 of 4,624.)

⁴⁹HTS code 7304 or 7306.

⁵⁰HTS code 7606.

Table 3: Department of Commerce Decisions on Steel and Aluminum Exclusion Requests with and without Objections, as of November 18, 2019

	Approved ^a	Percentage	Denied	Percentage
Steel requests				
with objections	2,533	18	11,329	82
without objections	46,244	86	7,404	14
Aluminum requests				
with objections	531	53	478	47
without objections	7,311	93	582	7

Source: GAO analysis of Regulations.gov data. | GAO-20-517

^aThis column includes partial approvals in which the Department of Commerce approved less than the total amount requested for exclusion.

Commerce Has Not Made Timely Decisions and Faces a Growing Backlog of Undecided Exclusion Requests

Commerce Often Did Not Meet Guidelines for Making Timely Decisions

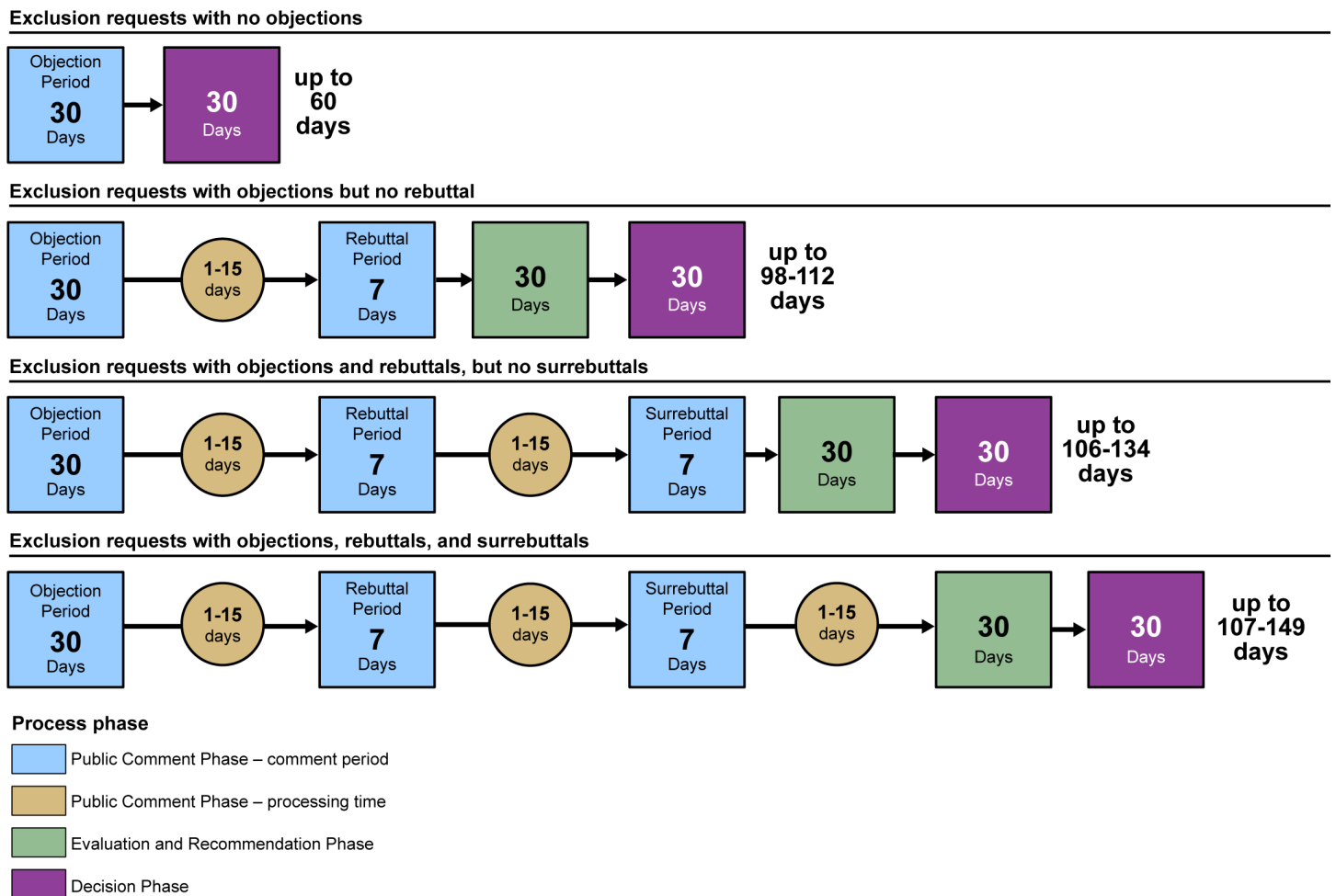
Commerce has guidelines for the timely resolution of tariff exclusion requests, established in its Interim Final Rule of September 11, 2018, and internal documentation, but it often did not meet those guidelines.⁵¹ According to the guidelines, Commerce will issue a decision in a specific timeframe depending on the extent to which the exclusion request received public comments. The Interim Final Rule states that the review period normally will not exceed 106 days for requests that receive objections.⁵² Internal guidance that Commerce used to implement the Interim Final Rule’s timeliness guidelines also notes the following: (1) requests that receive no objections will take up to 60 days to decide; (2) those with an objection, but no rebuttal, will take up to 112 days; (3) those with an objection and a rebuttal, but no surrebuttal, will take up to 134

⁵¹83 Fed. Reg. 46,026.

⁵²83 Fed. Reg. at 46,060 and 46,064.

days; and (4) those with an objection, a rebuttal, and a surrebuttal will take up to 149 days.⁵³ Figure 4 breaks down these timeframes.

Figure 4: Department of Commerce Guidelines for the Timely Resolution of Tariff Exclusion Requests



Source: GAO analysis of Commerce Documentation and September 11, 2018 Interim Final Rule. 83 Fed. Reg. 46,026 (Sept. 11, 2018). | GAO-20-517

⁵³The September 11, 2018, Interim Final Rule expanded the review process, which incorporated rebuttal and surrebuttal periods into the public comment phase. 83 Fed. Reg. at 46,058-59 and 46,063-64. Commerce also stated in the Interim Final Rule that the public comment period would include a 1- to 15-day processing period between the objection, rebuttal, and surrebuttal periods. 83 Fed. Reg. at 46,059 and 46,063. This processing period enables Commerce to review the information provided in the objection, rebuttal, and surrebuttal periods, and post the completed submissions to Regulations.gov.

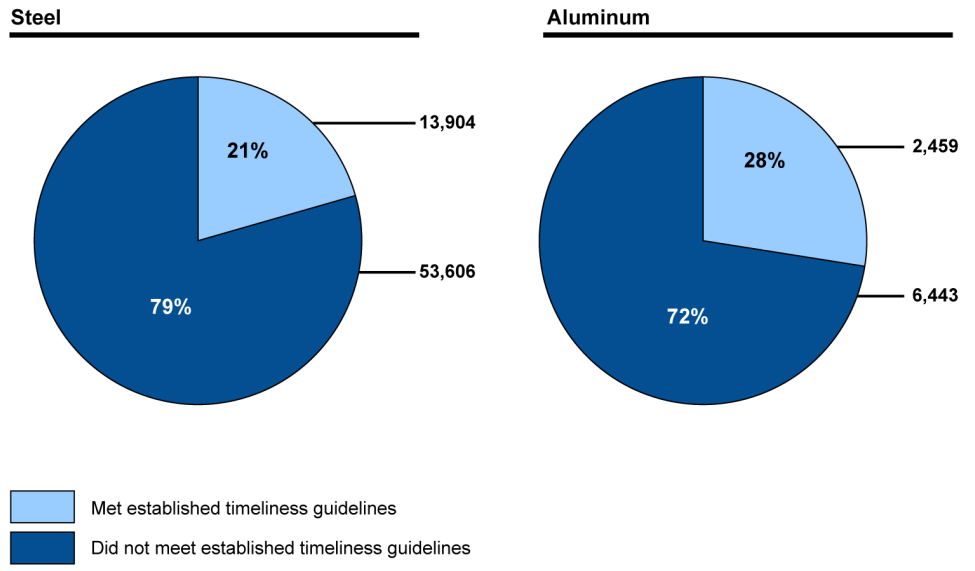
Note: The Department of Commerce's (Commerce) September 11, 2018, Interim Final Rule stated that the public comment period would include a one- to 15-day processing period between the objection, rebuttal, and surrebuttal periods. 83 Fed. Reg. at 46,059 and 46,063. This processing period enables Commerce to review the information provided in the objection, rebuttal, and surrebuttal and post completed submissions to Regulations.gov.

According to our analysis of agency data, as of November 18, 2019, Commerce did not meet timeliness guidelines for 79 percent of the decisions it made on exclusion requests (60,049 of 76,412).⁵⁴ Commerce did not meet timeliness guidelines for approximately 79 percent of steel and 72 percent of aluminum requests, as shown in figure 5 below.⁵⁵ The agency was less likely to meet established guidelines if it received an objection to the request from a domestic producer. Ninety-six percent of exclusion requests with objections did not meet timeliness guidelines compared with 75 percent of exclusion requests without objections.

⁵⁴We credited Commerce for the days submitted documents remained in processing during the partial government shutdown and lapse in appropriations from December 22, 2018, to January 25, 2019.

⁵⁵The amount of time an exclusion requests spends within Commerce's review increases when including the preclearance phase. Commerce's established timeliness guidelines do not account for the time required to review submitted exclusion requests prior to posting to Regulations.gov for public comment. Although not accounted for in the guidelines, Commerce's review of submitted requests during the preclearance phase took an average of 31 days for steel requests and 22 days for aluminum requests from March 19, 2018, to November 18, 2019.

Figure 5: Department of Commerce’s Performance in Meeting Its Timeliness Guidelines for Steel and Aluminum Exclusion Decisions, March 2018 to November 2019



Source: GAO analysis of Regulations.gov data. | GAO-20-517

In some instances, the agency took much longer than established guidelines to make a decision. Commerce’s guidance indicates that it should take no longer than 149 days to decide any request. However, Commerce took more than 200 days to decide 16 percent of steel (10,427 of 67,027) and 31 percent of aluminum requests (2,733 of 8,892). It took more than a year to decide 487 steel and 354 aluminum requests.⁵⁶

Commerce frequently did not meet its timeliness guidelines during several of the individual process phases, as shown in table 4 below. To determine the average length of time they spent in each phase, we examined a subset of 11,005 steel and 2,193 exclusion requests that had received

⁵⁶To understand better total processing times from the perspective of the firms requesting exclusion, we analyzed the amount of time requests spent in the process from when firms actually submitted them to the agency. Commerce’s internal guidance instructs the agency to begin tracking processing times from posting to Regulations.gov. However, the preclearance phase begins when the requester submits its exclusion to Commerce and ends when Commerce posts the request to Regulations.gov. As mentioned above, we found that Commerce’s timeliness guidelines do not account for the work done in this phase of the process. We found that the preclearance phase increases the overall time needed to decide exclusion requests. On average, steel requests took 31 days and aluminum requests took 22 days in this phase of the process. In addition, 38,415 steel and 4,739 aluminum requests took longer than 30 days to post to regulations.gov.

objections submitted from July 1, 2018, to November 18, 2019.⁵⁷ We found that on average exclusion requests spent twice as much time in the evaluation and recommendation phase than the 30 days stated in timeliness guidelines. Commerce also often exceeded its 30-day timeframe for the decision phase.

Table 4: Average Number of Days Steel and Aluminum Tariff Exclusion Requests with Objections Spent in Phases of the Tariff Exclusion Process, as of November 18, 2019

	Phase 1: Preclearance	Phase 2: Public Comment	Phase 3: Evaluation and Recommendation	Phase 4: Decision
Established timeliness guidelines for this phase	N/A	52-89	30	30
Steel, average days in phase	34	59	78	52
Aluminum, average days in phase	50	72	72	48

Source: GAO analysis of Regulations.gov data. | GAO-20-517

Notes: Due to limitations with Department of Commerce (Commerce) data, for this portion of the analysis, we examined a subset of 11,005 steel and 2,193 exclusion requests to determine the average length of time they spent in each phase of the process. This analysis examines only exclusion requests that received an objection, as exclusion requests that received no objections proceed directly to the decision phase.

Commerce also frequently did not meet its internal guidelines for reviewing and posting objections, rebuttals, and surrebuttals to Regulations.gov during the public comment phase. Overall, we found Commerce did not meet these guidelines for about 40 percent of the public comment submissions for steel exclusion requests and 26 percent of those for aluminum. By not meeting these posting guidelines, Commerce increased the uncertainty for the companies that submitted

⁵⁷These were submitted exclusion requests, with objections, that ITA had reviewed, for which the timeliness data concerning the evaluation and recommendation phase of the process were available. As a result, this portion of the analysis only examines the timeliness of approximately 15 percent (13,198 of 85,835) of the exclusion requests submitted from July 1, 2018, to November 18, 2019.

exclusion requests and expected to see documents posted within established guidelines.⁵⁸

Short Timeframes for Process Development Created Factors That Affected Decision Timeliness

Various factors increased the number of exclusion decisions that did not meet established timeliness guidelines. The presidential proclamations initiating the Section 232 steel and aluminum tariffs required Commerce to establish an exclusion process within 10 days of the proclamations.⁵⁹ According to Commerce officials, the limited time available to develop the process led to understaffing, technology challenges, internal agency error, and process adjustments that increased the overall time Commerce took to decide exclusion requests.⁶⁰

Understaffing. Commerce officials stated that the limited number of staff available increased the number of exclusion requests that took longer than established guidelines to process. In March 2018, Commerce reported that it estimated that it would receive 4,500 exclusion requests and 1,500 objections for both steel and aluminum tariffs and allocated staff accordingly. However, as of November 2019, it had received more than 100,000 requests and 30,000 objections. According to Commerce officials, the agency did not initially add staff to complete the reviews within the established guidelines for this high number of requests and objections. Commerce officials also stated that parts of the review process are labor intensive, and the number of staff available to conduct reviews affects the time required to reach a decision. For example, Commerce staff had to manually download each exclusion request received from Regulations.gov. Commerce officials told us that due to the limited number of staff, these labor intensive parts of the process reduced the rate at which Commerce was able to decide requests.

⁵⁸According to Commerce officials, the agency sought to address any uncertainty by notifying requesters when Commerce had posted objections so they could decide whether to prepare rebuttals.

⁵⁹Proclamation No. 9704, 83 Fed. Reg. at 11,621 and Proclamation No. 9705, 83 Fed. Reg. at 11,627.

⁶⁰According to Commerce officials, the partial government shutdown in January 2019 also placed a great strain on their ability to process exclusion requests in a timely manner. Commerce processed no exclusion requests during the shutdown so those applying for exclusion had to wait longer to receive a decision. In our timeliness calculations, we did not count days the submitted documents were in processing during the partial government shutdown and lapse in Commerce appropriations from December 22, 2018, to January 25, 2019.

Technology Challenges. Commerce experienced problems with the website, Regulations.gov, used to process submitted exclusion requests. According to Commerce officials, Commerce did not have time to develop a new website for the submissions and opted to use the Regulations.gov website since it was immediately available and inexpensive.⁶¹ These officials stated that Regulations.gov was not designed for the purposes of the exclusion process and was unable to handle the volume of requests received. As a result, according to Commerce officials, the website required a significant amount of manual entry and sometimes malfunctioned, making it difficult to accurately track and adequately process the requests. These limitations increased the overall time required to review exclusion requests.

Internal Agency Error. Commerce also made some errors processing exclusion requests that likely increased the time required to make some decisions. For example, according to internal agency documentation, Commerce did not always process exclusion requests in the order received. In one instance, BIS officials did not process 393 exclusion requests submitted in 2018 upon their receipt. According to agency documentation, BIS had not decided any of these requests as of October 2019, although it had had successfully processed other exclusion requests submitted as recently as June 2019.⁶²

Process Adjustments. Commerce made changes to improve the process, but implementing these changes increased the time taken to process some requests. For example, Commerce initially did not allow for the submission of rebuttals and surrebuttals. Commerce adjusted the process to include rebuttal and surrebuttal periods to allow requesters to respond to objections. As part of this effort, Commerce withheld decisions for all exclusion requests that received an objection

⁶¹According to agency officials, Commerce took some initial steps to develop the process before the tariffs were announced, including creating exclusion request and objection filing forms.

⁶²In addition, our analysis of data on Regulations.gov found some weaknesses with the process Commerce used to track exclusion requests. For example, Commerce had some duplicate identification numbers for exclusion requests. According to Commerce officials, Commerce had to track down these duplicate identification numbers manually to correct this problem. As a result, Commerce did not always have an accurate account of the requests it was processing, likely leading to further delays. According to BIS officials, the agency had to develop additional processes to ensure accurate identification of submissions until the exclusion portal came online on June 13, 2019.

between July 26, 2018, and September 11, 2018.⁶³ Furthermore, according to Commerce officials, they recognized that allowing parties to submit rebuttals and surrebuttals would increase the time needed to process those requests.

Commerce Has Taken Some Steps Intended to Improve the Timeliness of Its Process

Commerce and CBP have made a number of staffing and process changes to reduce the time it takes to process an exclusion request, according to agency officials. These changes include adjusting the number of staff reviewing the submissions, streamlining the review process for requests with no objections, adding a semi-automated review of HTS codes, and replacing Regulations.gov with a new website for processing exclusion requests.

Increased Staffing: According to agency officials, Commerce in fiscal year 2018 increased the number of staff assigned to review exclusion requests. In that year, Commerce, according to a report it submitted to Congress, received Congressional approval and reprogrammed funding for BIS to hire 12 contractors to expedite the exclusion process. These contractors helped address the unexpected volume of exclusion requests by increasing the rate at which BIS was able to post exclusion requests and improving its ability to respond to industry inquiries. Separately, ITA funded contracts for 51 research analysts and two subject matter experts on steel and aluminum. These contractors improved BIS's posting capacity and response time to industry inquiries and improved ITA's ability to complete more evaluations and recommendations in less time, according to agency officials.

Streamlined Review Process: Commerce has made efforts to streamline and improve the exclusion process by eliminating some of the more labor-intensive parts of the review, according to Commerce officials. For instance, according to officials, BIS submitted about 7,000 exclusion requests to ITA from March 19, to July 31, 2018, for evaluation regardless of whether they received an objection during the public comment period. On July 31, 2018, Commerce changed the process to allow exclusion requests that received no objections to proceed directly to the decision phase. This step potentially reduced

⁶³As a result, those who submitted a request on July 25, 2018, would have waited up to 47 additional days with the additional rebuttal and surrebuttal steps to receive a decision.

the time needed for review of exclusion requests without objections by about 30 days.⁶⁴

Semi-automated HTS Code Assessment: CBP realized that it could not review requests in a timely manner by manually assessing whether the provided HTS code was administrable, according to CBP officials. CBP officials also stated that manually reviewing each request quickly became untenable as Commerce received thousands more requests than originally projected. In response, CBP developed a semi-automated process in July 2018 that utilized an algorithm to improve the efficiency and speed of the review. This algorithm analyzed the specifications listed in the exclusion request to determine if the requested steel or aluminum specifications align with the parameters established for the HTS code identified in the request. According to CBP officials, the algorithm allowed them to review thousands of exclusion requests within a few hours.⁶⁵

Replacement of Regulations.gov: Faced with numerous challenges in using the Regulations.gov website, Commerce created a new website, the exclusion portal, to reduce the time required for the preclearance phase, public comment phase, and the decision phase.⁶⁶ According to Commerce officials, the new exclusion portal, launched in June 2019, provides users with a real-time status on each of their exclusion requests so they can follow their progress and have greater visibility into the process. The exclusion portal also has data validation capabilities to better ensure requesters submit the required information.⁶⁷ According to Commerce officials, data validation will enable requests to proceed through these phases more quickly.

⁶⁴BIS officials stated that Commerce made this change after it determined that having no objection indicated a lack of domestic production and therefore ITA would not need to review such requests.

⁶⁵According to agency officials, CBP is able to review and determine administrability for exclusion requests in the exclusion portal, which has significantly improved processing time.

⁶⁶<https://www.commerce.gov/page/section-232-investigations>.

⁶⁷Exclusion requests, objections, rebuttals, and surrebuttals submitted through Regulations.gov required Commerce personnel to manually pull the documents from Regulations.gov, review the information to confirm the documents contained the required information, and finally post the documents to Regulations.gov.

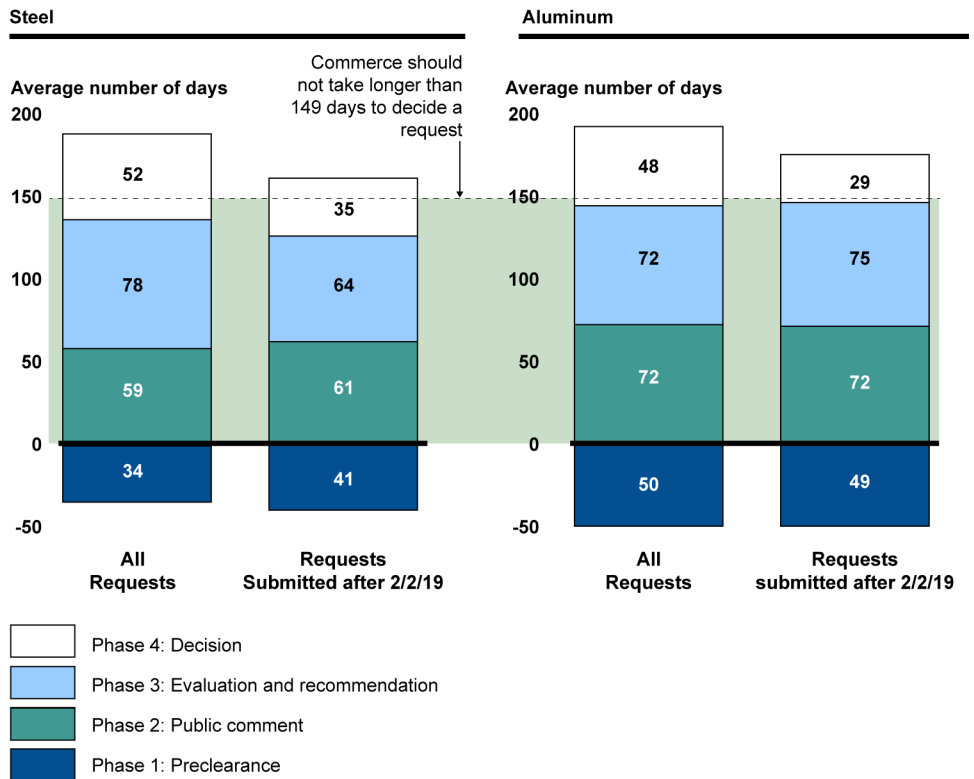
Commerce Continues Not to Meet Its Guidelines for Timely Decisions and Has a Growing Backlog

Although Commerce has taken a number of steps to improve the process, it is often not meeting established timeliness guidelines and has a growing backlog of requests. For requests submitted to Regulations.gov from February 2, 2019, to June 12, 2019, we found that Commerce's review of about 42 percent of steel and 27 percent of aluminum exclusion requests without objections did not meet established timeliness guidelines.⁶⁸ About 74 percent of steel and 85 percent of aluminum requests with objections did not meet the guidelines. For these more recent requests submitted to Regulations.gov, Commerce has not reduced the amount of time spent in individual phases of the process enough to meet established timeliness guidelines (see fig. 6).⁶⁹

⁶⁸We examined requests submitted from February 2, 2019, to June 12, 2019, since these requests were the most recent requests submitted and Commerce processed them after it had made significant changes to the process. These changes include adjustments to the timing of the CBP's review of the HTS code and the decision to have ITA not evaluate exclusion requests without objections. This analysis does not include requests submitted through the new exclusion portal starting on June 13, 2019. According to Commerce officials, the use of the new exclusion portal has improved processing times.

⁶⁹Due to limitations with Commerce data, for this portion of the analysis, we examined a subset of 11,005 steel and 2,193 aluminum exclusion requests to determine the average length of time they spent in each phase of the process. All of these requests received an objection as exclusion requests that received no objections proceed directly to the decision phase.

Figure 6: Time That Steel and Aluminum Tariff Exclusion Requests with Objections Spent in the Exclusion Process, by Phase, as of November 18, 2019



Source: GAO Analysis of Regulations.gov data and Commerce internal guidance. | GAO-20-517

Notes: Due to limitations with Department of Commerce (Commerce) data, for this portion of the analysis, we examined a subset of 11,005 steel and 2,193 aluminum exclusion requests to determine the average length of time they spent in each phase of the process. All of these requests received an objection. According to Commerce guidelines, exclusion requests should take at least 98 days and at most 149 days to decide depending on whether the exclusion request receives an objection, rebuttal, or surrebuttal. Commerce does not have timeliness guidelines for the preclearance phase of the process.

As of November 18, 2019, Commerce had not yet decided 10 percent (7,516 of 75,026) of steel exclusion requests and 18 percent (1,907 of 10,809) of aluminum exclusion requests submitted through Regulations.gov. These pending requests have already exceeded the

timeliness guidelines and indicate that Commerce still faces challenges deciding requests in a timely manner.⁷⁰

Commerce also continued to accumulate a backlog of exclusion requests. As mentioned above, Commerce had 9,423 exclusion requests waiting for decision from Regulations.gov as of November 18, 2019. Meanwhile, requesters had submitted 38,914 requests to the new exclusion portal since June 2019, and 19,126 were awaiting a decision. According to Commerce officials, the agency decided requests submitted to Regulations.gov before processing submissions to the new exclusion portal, which led to a backlog.

Commerce was still unable to complete its review of exclusion requests within established timeliness guidelines at the rate it was receiving the requests. For example, according to agency documentation, ITA completed an average of about 1,300 recommendations per month since the exclusion process began.⁷¹ As of December 30, 2019, Commerce officials said that ITA still had to evaluate 6,943 exclusion requests that had received an objection through the exclusion portal. If evaluations continue at this rate, ITA will not be able to complete these evaluations within established guidelines. According to agency documentation, Commerce received about 1,100 exclusion requests with objections per month from March 2018 to November 2019. Commerce will continue to receive new requests while both ITA and BIS are addressing older requests, which will ensure the backlog remains.

According to Standards for Internal Controls in the Federal Government, management should design control activities—policies, procedures, techniques, and mechanisms—in response to the entity's risks.⁷² Commerce has not established activities to identify and assess the issues that have increased the number of exclusion requests taking longer than guidelines allow for processing, especially during the evaluation and recommendation and decision phases. Commerce has also not designed any steps to reduce the growing backlog of exclusion requests requiring a decision. For instance, Commerce could explore additional steps, similar

⁷⁰Since Commerce stopped accepting requests through Regulations.gov on June 12, 2019, we determined that all requests on which Commerce had not reached a decision as of November 18, 2019, did not meet established timeliness guidelines.

⁷¹Due to limitations with Commerce data, to calculate this figure, we only examined a subset of 11,005 steel and 2,193 aluminum exclusion requests.

⁷²GAO-14-704G, 45.

to the ones it has already taken, to streamline the process further, make technological improvements, or shift resources dedicated to processing exclusion requests.

Without additional changes, Commerce will continue to process exclusion requests in an untimely manner and the backlog of requests will likely remain or continue to grow. As a result, companies will experience long waiting periods for decisions on their requests, which will increase business uncertainties. Moreover, companies that eventually receive an exclusion must bear the financial burden of the tariffs paid on steel and aluminum products already imported for a longer period until they receive a decision and can request a refund.

Commerce Has Indicated That It Evaluates the Impact of the Tariffs, but Has Not Documented the Results or Assigned Responsibility for Regular Reviews

Our analysis of import data found evidence of potential impacts of the tariffs on steel and aluminum imports and markets. For example, imports of those products included in the tariffs decreased after an initial surge, while imports of those products not included increased. In addition, steel and aluminum prices experienced large fluctuations, reversing upward trends a few months after the implementation of the Section 232 tariffs. Commerce indicated that it took some steps to evaluate changes in the capacity utilization of the steel and aluminum industries, and would conduct semi-annual reviews of the impacts of the steel and aluminum tariffs. However, Commerce was unable to produce documentation containing the results of any reviews or to identify the agency officials responsible for regularly reviewing the impacts of the Section 232 tariffs.

Importers Paid Tariffs on About Half of the Imports of Steel and Aluminum Products Covered Under the Section 232 Tariffs

Our analysis of import data found that importers paid tariffs on about half of all imports of steel and aluminum products covered under the Section 232 tariffs from March 2018 to January 2020. Government policies and actions have created different tariff treatments for steel and aluminum imports. Some importers did not have to pay tariffs on their imports because BIS granted an exclusion, or the companies were importing from exempted countries.⁷³ To understand the impact of these tariffs, it is critical to analyze the extent to which importers paid tariffs, or were

⁷³For this report, the Section 232 tariffs refer to the tariffs announced by Presidential Proclamations 9704 and 9705 in March 2018. We do not include the additional tariffs on steel and aluminum derivative products announced in January 2020. The tariffs we report on represent the assessed tariffs at the time of importation for imports in 2019 and 2020 and may reflect some refunds that importers have received through retroactive relief on imports in 2018.

excluded or exempted from tariffs, and the reasons for those exclusions or exemptions.

We found that imports of steel and aluminum products covered under the Section 232 tariffs totaled about \$82 billion from March 2018 to January 2020, with about \$51 billion being steel imports and \$31 billion being aluminum imports. We found that importers paid tariffs on 51 percent of steel imports and 62 percent of aluminum imports of covered products.⁷⁴ We estimate that importers paid about \$6.4 billion in tariffs for steel and \$1.9 billion for aluminum imported from March 2018 to January 2020.

Country-based exemptions, rather than product-based exclusions, account for the majority of the imports for which Section 232 tariffs were not collected. For both steel and aluminum, imports from some countries during certain months were exempt from the tariffs.⁷⁵ This potentially results in an uneven application of tariffs across importers of products covered by the tariff. Imports from these exempt countries were either

⁷⁴According to Census, if importers receive the tariff exclusion after importation and file a Post-Summary Correction to receive a refund of the tariffs paid, the revised trade statistics will reflect the refund. However, according to Census, there are cases where importers do not need to file a Post-Summary Correction to receive the refund. As a result, the revised trade statistics will not reflect all of the refunds. Additionally, we downloaded the data for this report before the 2020 revision, which covers trade statistics in 2019. Therefore, the 2018 trade data we used may reflect tariff exclusion refunds from Post-Summary Corrections, but the 2019 and 2020 trade data do not, according to Census.

⁷⁵Starting on March 23, 2018, steel imports from Brazil, Argentina, and South Korea were exempt from the tariffs until the United States concluded an agreement with those countries to reach a country-specific import quota. Proclamation No. 9711, 83 Fed. Reg. 13,361 (Mar. 28, 2018). Once the United States concluded an agreement with each country, steel imports could enter the United States free from the Section 232 steel tariffs until the quota was reached. Once the quantitative limitation was filled, only those steel imports for which an exclusion was granted could enter the United States. Since March 23, 2018, steel products from Australia were exempt from the Section 232 tariffs. Proclamation No. 9711, 83 Fed. Reg. 13,361; Proclamation No. 9740, 83 Fed. Reg. 20,683; and Proclamation No. 9759, 83 Fed. Reg. 25,857. Before June 1, 2018, steel and aluminum imports from the European Union, Canada, and Mexico were exempt from the Section 232 tariffs. Proclamation No. 9739, 83 Fed. Reg. 20,677 (May 7, 2018); Proclamation No. 9740, 83 Fed. Reg. 20,683; Proclamation No. 9758, 83 Fed. Reg. 25,849; and Proclamation No. 9759, 83 Fed. Reg. 25,857. Effective May 20, 2019, steel and aluminum imports from Canada and Mexico have been exempt from the Section 232 tariffs. Proclamation No. 9893, 84 Fed. Reg. 23,983 (May 23, 2019) and Proclamation No. 9894, 84 Fed. Reg. 23,987 (May 23, 2019). Aluminum imports from Argentina and Australia have been exempt from the Section 232 tariffs since March 23, 2018. Proclamation No. 9710, 83 Fed. Reg. 13,335 (Mar. 28, 2018); Proclamation No. 9739, 83 Fed. Reg. 20,677; and Proclamation No. 9758, 83 Fed. Reg. 25,849.

subject to or not subject to a quota.⁷⁶ The top four exporting countries of steel products and the top exporting country of aluminum products were exempt from the tariffs at various points, either with or without a quota.⁷⁷

- Imports from exempt countries and quota countries accounted for \$20 billion (80 percent) of overall steel products to which Section 232 tariffs did not apply from March 2018 to January 2020. Therefore, the remaining \$5 billion of steel imports excluded from the tariffs was likely the result of individual companies successfully obtaining tariff exclusions, as shown in figure 7.⁷⁸ For a more detailed discussion of the breakdown of steel imports by tariff status, see appendix VI.
- Imports from exempt countries and quota countries accounted for \$9 billion (75 percent) of aluminum products to which Section 232 tariffs did not apply from March 2018 to January 2020. Therefore, the remaining \$3 billion of aluminum imports excluded from the tariffs was likely the result of individual companies successfully obtaining tariff exclusions, as shown in figure 7.⁷⁹ For a more detailed discussion of the breakdown of aluminum imports by tariff status, see appendix VI.

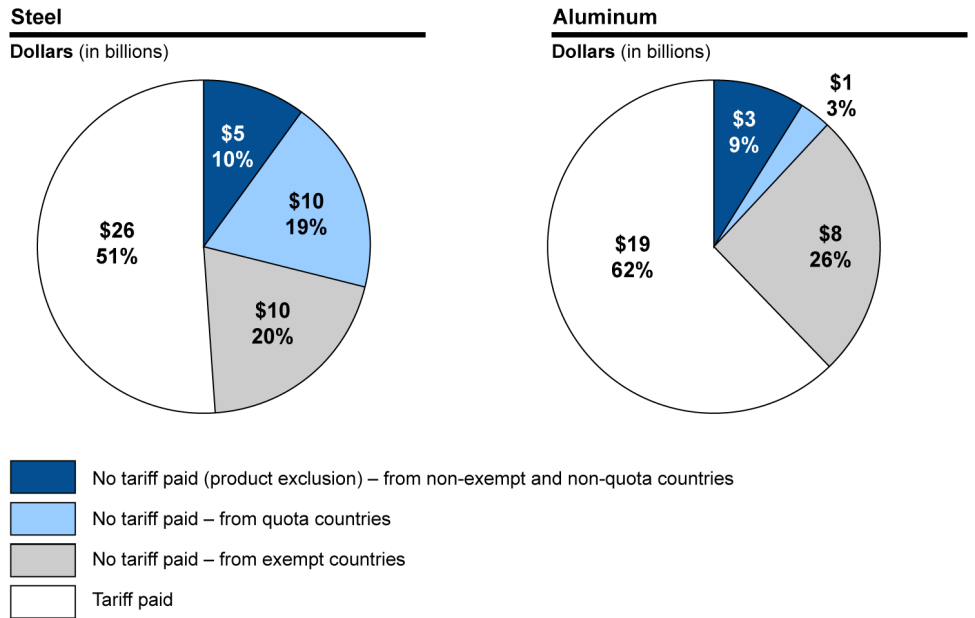
⁷⁶For the purposes of this report, “exempt countries” are countries with an exemption and not subject to a quota and “quota countries” are countries with an exemption and subject to a quota. An import quota is a trade restriction mechanism that governments use to limit the quantity of a good that companies can import into a country. Like tariffs, governments can use import quotas to protect domestic industry from foreign competition. For the quota countries, once the United States concluded an agreement with each country, imports of steel or aluminum from those countries could enter the United States free from the Section 232 tariffs until the quantitative limit or quota was reached. Once the quota was filled, only those imports for which a quota exclusion was granted could enter the United States

⁷⁷From May 2016 through January 2020, Canada, Mexico, South Korea, and Brazil were the top four exporters of steel products covered by the Section 232 tariffs and Canada was the top exporter of aluminum products covered by the Section 232 tariffs. All aluminum products from Canada were not under quota and were exempt from the Section 232 aluminum tariffs from March 2018 through May 2018 and then again in May 2019 through August 2020. Tariffs for non-alloyed unwrought aluminum under subheading 7601.10 from Canada were re-imposed on August 16, 2020. Proclamation No. 10060, 85 Fed. Reg. 49,921 (Aug. 6, 2020).

⁷⁸The \$5 billion in imports represents 20 percent of overall steel products to which Section 232 tariffs did not apply from March 2018 to January 2020.

⁷⁹The \$3 billion in imports represents 25 percent of overall aluminum products to which Section 232 tariffs did not apply from March 2018 to January 2020.

Figure 7: Steel and Aluminum Import Values by Section 232 Tariff Status, March 2018 to January 2020



Source: GAO analysis of U.S. Census trade statistics. | GAO-20-517

Notes: We calculated values and quantities using the total value of steel and aluminum product imports covered by the Section 232 tariffs. The list of covered steel and aluminum products are respectively listed in Presidential Proclamations 9705 and 9704. The U.S. Census public trade statistics we downloaded in March 2020 do not account for retroactive tariff relief provided to importers in 2019 and 2020, suggesting that the true level of imports coming under exemption could be higher and the imports subject to tariffs are potentially lower. Finally, due to a programming error in Census’s data compilation procedures, the data may misclassify a small fraction of steel and aluminum import transactions as exempt or subject to tariff. Therefore, the figures presented have some margin of error. Numbers may not sum to totals due to rounding.

Tariffs May Have Had Several Impacts on U.S. Steel and Aluminum Imports and Markets

Imports of Steel and Aluminum Products Included in the Proclamations Declined after an Initial Surge While Those Not Included Increased

Imports of steel and aluminum experienced notable changes since the imposition of the Section 232 tariffs. We found that imports of steel and aluminum products included in the Section 232 presidential proclamations

surged in March 2018 right before the tariffs took effect.⁸⁰ Imports of these steel and aluminum products increased by 27 percent and 41 percent respectively in March 2018 from the previous month.⁸¹ After the initial surge in March, imports of the same steel and aluminum products declined by 22 percent and 33 percent respectively from March to June 2018.

Imports of steel and aluminum products not included in the proclamations continued to increase from March to June 2018. Imports of these steel and aluminum products increased by 4 percent and 5 percent respectively in March 2018 from the previous month. Imports of the same steel and aluminum products increased by 11 percent and 18 percent respectively from March to June 2018.

We found that annual import values and quantities of both steel and aluminum products included in the proclamations were lower in the year after the tariffs took effect, but import values and quantities of steel and aluminum products not included in the proclamations were higher. Table 5 shows that average monthly imports of the included steel products were lower, while average monthly imports of steel products not included were higher during June 2018 to May 2019 compared with March 2017 to February 2018.⁸² Steel imports increased overall, but average monthly imports of steel products included in the proclamations were 9 percent lower and monthly imports of steel products not included were 14 percent higher.

⁸⁰Only a subset of steel and aluminum articles, indicated by specific HTS codes included in Presidential Proclamations 9705 and 9704 respectively, were subject to the Section 232 tariffs. For this analysis, we examined imports of products that have these HTS codes including imports of these products from exempt and quota countries.

⁸¹Less than 1 percent of steel imports and about 6 percent of aluminum imports were subject to the Section 232 tariffs in March 2018.

⁸²We chose to compare the monthly level of imports starting 3 months after the Section 232 tariff proclamations in March 2018 as a comparison to control for the volatility immediately following the introduction of a new tariff.

Table 5: Import Values and Quantities of Steel Products Changed After the Section 232 Tariffs Took Effect

	Value in Billions of dollars		Quantity in Billions of kilograms		
	Before Section 232 Tariffs Were Imposed (Mar. 2017–Feb. 2018)	After Section 232 Tariffs Were Imposed (Jun. 2018–May 2019)	Before Section 232 Tariffs Were Imposed (Mar. 2017–Feb 2018)	After Section 232 Tariffs Were Imposed (Jun. 2018–May 2019)	
Steel Products Included in Presidential Proclamation	Total	30.09	27.42	34.54	29.03
	Monthly Average	2.51	2.29	2.88	2.42
Steel Products Not Included in Presidential Proclamation	Total	36.30	41.55	12.03	14.67
	Monthly Average	3.02	3.46	1.00	1.22
All Steel Products	Total	66.38	68.97	46.57	43.69
	Monthly Average	5.53	5.75	3.88	3.64

Source: GAO analysis of U.S. Census Trade Statistics. | GAO-20-517

Notes: Presidential Proclamation 9705 imposed the Section 232 steel tariffs on March 23, 2018. We calculated values and quantities using the total product imports included in Presidential Proclamation 9705, steel product imports not included in the proclamation, and overall steel imports. Imports of steel products included totaled \$29 billion in the 12 months from April 2018 through March 2019. Imports of steel products not included totaled \$42 billion in the 12 months from April 2018 through March 2019. Imports of overall steel products totaled \$70 billion in the 12 months from April 2018 to March 2019. We chose to measure the level of imports starting 3 months after the Section 232 tariff proclamations in March 2018 as a comparison to control for the volatility immediately following the introduction of the new tariff.

Table 6 shows that average monthly imports of included aluminum products were lower, while average monthly imports of aluminum products not included were higher during June 2018 to May 2019 compared with March 2017 to February 2018. Overall value of aluminum imports declined, but average monthly import values of aluminum products included in the proclamations was 8 percent lower and average monthly import values of aluminum products not included in the proclamations were 14 percent higher.⁸³

⁸³We chose to compare the monthly level of imports starting 3 months after the Section 232 tariff proclamations in March 2018 as a comparison to control for the volatility immediately following the introduction of a new tariff.

Table 6: Import Values and Quantities of Aluminum Products Changed After the Section 232 Tariffs Took Effect

	Value in billions of dollars		Quantity in Billions of kilograms		
	Before Section 232 Tariffs Were Imposed (Mar. 2017–Feb. 2018)	After Section 232 Tariffs Were Imposed (Jun. 2018–May 2019)	Before Section 232 Tariffs Were Imposed (Mar. 2017–Feb. 2018)	After Section 232 Tariffs Were Imposed (Jun. 2018–May 2019)	
Aluminum Products Included in Presidential Proclamation	Total	17.33	16.02	6.78	5.68
	Monthly Average	1.44	1.33	0.57	0.47
Aluminum Products Not Included in Presidential Proclamation	Total	5.24	5.98	2.99	4.45
	Monthly Average	0.44	0.50	0.25	0.37
All Aluminum Products	Total	22.57	22.00	9.78	10.13
	Monthly Average	1.88	1.83	0.81	0.84

Source: GAO analysis of U.S. Census Trade Statistics. | GAO-20-517

Notes: Presidential Proclamation 9704 imposed the Section 232 aluminum tariffs on March 23, 2018. We calculated values and quantities using the total product imports included in Presidential Proclamation 9704, aluminum product imports not included in the proclamation, and overall aluminum imports. Aluminum imports included in the proclamation totaled \$16.5 billion in the 12 months from April 2018 through March 2019. Imports of aluminum products not included totaled \$6 billion in the 12 months from April 2018 through March 2019. Imports of overall aluminum products totaled \$22.5 billion in the 12 months from April 2018 through March 2019. We chose to measure the level of imports starting 3 months after the Section 232 tariff proclamations to control for the volatility immediately following the introduction of the new tariff.

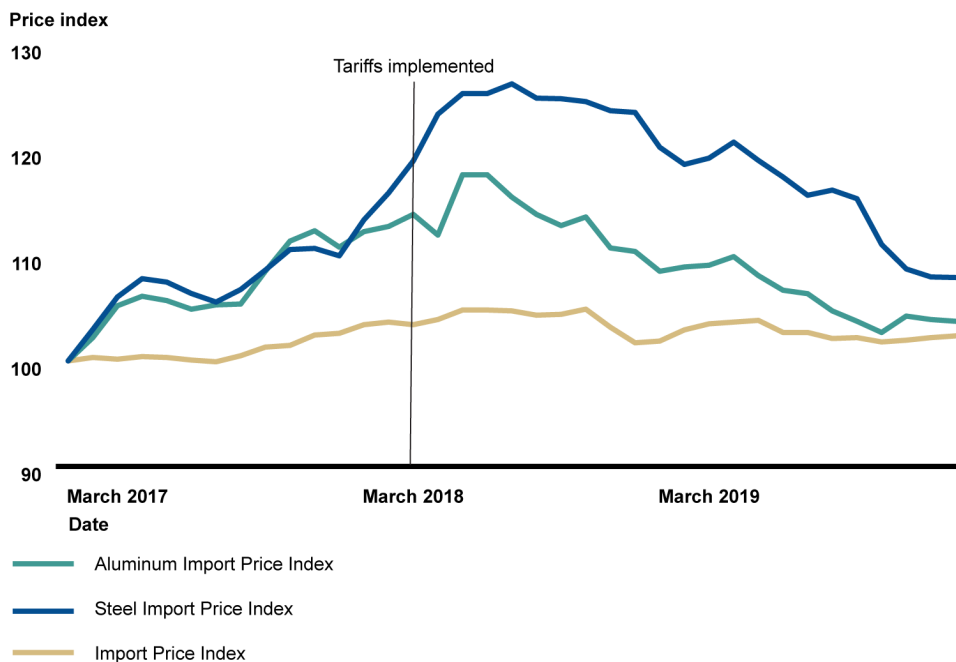
Steel and Aluminum Prices Declined after the Tariffs Were Implemented

Prices of steel and aluminum products fluctuated significantly in the last 3 years while overall prices of imported and domestically produced goods remained relatively stable, implying significant changes in the U.S. steel and aluminum markets. We compared import and producer price indices of steel and aluminum to overall import and producer price indices to gauge whether significant changes had occurred in the domestic steel and aluminum markets. Economic indices are measures of economic activities benchmarked to a base year.⁸⁴ BLS calculates import price indices using price information from a set of establishments that trade

⁸⁴For instance, if the base month for the steel producer price index were December 2003, the producer price index for steel in December 2003 would be equal to 100. Therefore, a producer price index measured above 100 would indicate prices increased relative to December 2003. Conversely, a producer price index measured below 100 would indicate prices decreased relative to December 2003. The base month used in this analysis for all price indices was January 2017.

steel or aluminum products.⁸⁵ Similarly, BLS calculates producer price indices by examining certain goods produced in the United States.⁸⁶ Overall import and producer prices stayed relatively constant when compared with import and producer price indices of steel and aluminum. Steel and aluminum import prices experienced large increases until a few months after the tariffs were implemented. The upward trend in prices then reversed and started to decline. Steel and aluminum import prices have respectively declined about 15 and 12 percent from their peaks in early summer 2018 to January 2020. Meanwhile, import prices of all products declined about 2 percent from their peak, which occurred in 2018. Import price indices for steel and aluminum increased over the period from March to June 2018 and then decreased over the period from June 2018 to January 2020, as shown in figure 8.

Figure 8: Monthly Import Price Indices: Steel, Aluminum, and Overall from January 2017 to January 2020



Source: GAO analysis of BLS import price indices for steel, aluminum, and overall imports. | GAO-20-517

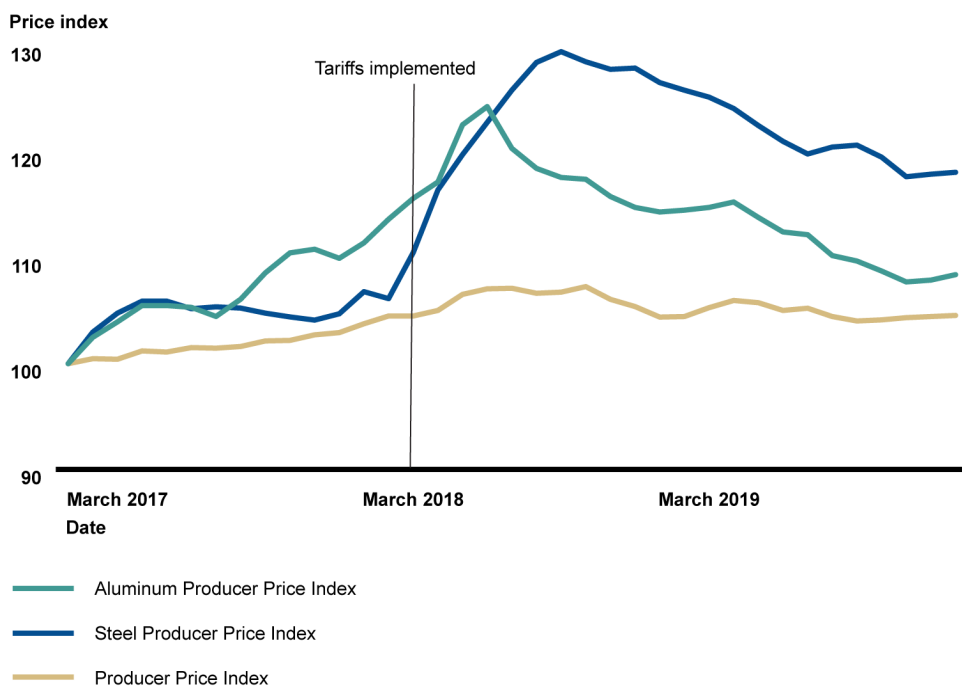
⁸⁵For instance, the steel import price index is measured using the set of steel products traded between other countries and a fixed sample of business establishments located in the United States. .

⁸⁶Steel and aluminum import and producer price indices may be calculated using products that are covered and not covered by the Section 232 tariffs.

Note: Bureau of Labor Statistics (BLS) calculates import price indices by examining certain goods imported into the United States. The goods included in the calculation of steel and aluminum import prices are likely not the same as the products subject to Section 232 tariffs. Nevertheless, these indices provide a proxy for the price trends in steel and aluminum products. The base month for these indices is January 2017.

Similarly, steel and aluminum producer prices increased until a few months after the tariffs were implemented. Prices reversed the upward trend and started to decline in the fall of 2018. Price indices for domestic producers for steel and aluminum increased over the period from March to June 2018 and then decreased over the period from June 2018 to January 2020, as shown in figure 9.

Figure 9: Monthly Domestic Producer Price Indices: Steel, Aluminum, and Overall from January 2017 to January 2020



Source: GAO analysis of BLS producer price indices for steel, aluminum, and overall goods. | GAO-20-517

Note: Bureau of Labor Statistics (BLS) calculates producer price indices by examining certain goods produced by manufacturers in the United States. The goods included in the calculation of steel and aluminum producer prices are likely not the same as the products subject to the Section 232 tariffs. Nevertheless, these indices provide a proxy for the domestic price trends in steel and aluminum products. The base month for the indices is January 2017.

Commerce Has Not Documented the Results of Tariff Impact Evaluations or Assigned Responsibility for Regular Reviews

As noted above, we found evidence of potential impacts of the Section 232 tariffs on steel and aluminum imports and markets. Evaluating whether the tariffs have achieved the intended goals and how the tariffs affect downstream sectors would require more in-depth economic analysis.⁸⁷ For example, such analysis could examine how the different tariff treatments affect levels of steel and aluminum imports, how the price and the demand for domestic steel and aluminum changes in response to the tariffs, or how changes in prices affect producers that rely on steel and aluminum.

Commerce documents provided some indication that the agency has taken steps to evaluate the impact of the tariffs. For example, presidential proclamations that adjusted the tariffs indicated that the adjustments were due to Commerce evaluations of changes in the capacity utilization of the steel and aluminum industries.⁸⁸ Offices within ITA, according to Commerce officials, also provide the Office of the Secretary with monthly summaries of Section 232 steel and aluminum import statistics and respond to ad hoc requests for trade and industry data. According to Commerce officials, as of August 2020, the Secretary also meets with steel and aluminum producers and members of downstream industries to obtain information and data regarding changing market conditions to inform the Secretary's understanding of overcapacity in the global markets, how countries are responding, and impacts on U.S. producers. Most importantly, the September 11, 2018, Interim Final Rule indicated the Secretary of Commerce had directed department economists to regularly review the impacts of the steel and aluminum tariffs and quantitative limitations, including on downstream sectors.⁸⁹ In addition, Commerce indicated in written responses provided to the U.S. House of Representatives Committee on Ways and Means that the Secretary had directed the department economists to conduct semi-annual reviews of

⁸⁷As a result of investigations initiated under Section 232 into the effects of imported steel and aluminum on national security, the Secretary of Commerce recommended that the President take immediate action by adjusting the level of imports through quotas or tariffs on steel and aluminum to keep those U.S. industries financially viable and able to meet national security needs. The recommendations noted that the tariffs or quotas imposed should be sufficient to enable domestic producers to operate at a capacity utilization rate of 80 percent based on 2017 capacity levels.

⁸⁸Proclamation No. 9893, 84 Fed. Reg. 23,983 (May. 19, 2019) and Proclamation No. 9886, 84 Fed. Reg. 23,421 (May 21, 2019).

⁸⁹83 Fed. Reg. at 46,028.

the impacts of the steel and aluminum tariffs, including on downstream sectors.

However, Commerce was unable to identify the agency officials responsible for regularly reviewing the impacts of the Section 232 tariffs. Moreover, we were unable to determine whether Commerce conducted any regular reviews of the tariffs' impacts, and agency officials were unable to produce documentation containing the results of any reviews. Standards for Internal Control in the Federal Government state that management should assign responsibility to achieve the entity's objectives, and should evaluate and document the results of ongoing monitoring and evaluations to identify internal control issues.⁹⁰ Commerce officials told us that the Office of the Secretary has not assigned responsibility or delegated authority to any bureau or office to carry out these reviews. Agency officials, including those from BIS, ITA, and Census, all indicated they had not conducted any review of the impact of tariff exclusions or exemptions. Therefore, we were unable to determine how Commerce used data collected on imports to assess the impact of the tariffs. Without assigning responsibility for conducting regular reviews and documenting the results, Commerce will be unable to ensure the consistency or quality of its reviews over time and may lack the information necessary to regularly assess the need for further action under Section 232, such as increasing the tariff rate or deciding if tariffs are still necessary.

Conclusions

Receiving timely information and guidance is critical for domestic companies requesting or objecting to exclusion from Section 232 tariffs. Commerce has established a process and criteria for requesting exclusion from the tariffs, but has rejected over 19,000 exclusion requests containing submission errors without a decision. These rejections delay decisions for those requesting exclusion, create additional work for Commerce, and may limit the amount of relief a requester receives. However, Commerce has not identified, analyzed, and responded to factors that could increase rejections.

We also found that Commerce has frequently not met established guidelines for the timely review of requests. For example, it did not meet these guidelines for 79 percent of steel and 72 percent of aluminum exclusion requests, with some requests taking more than a year to receive a decision. A number of factors affected Commerce's ability to

⁹⁰[GAO-14-704G](#), 34 and 72.

meet these guidelines. Commerce's new website may improve processing time in the preclearance and public comment phases of the process, but other factors in the evaluation and recommendation and decision phases continue to increase the time needed to process requests. Commerce has yet to take steps to address these factors, such as developing new procedures, techniques, or reallocating resources. At the same time, Commerce has a growing backlog of unprocessed exclusion requests with no plan to reduce its size. Without addressing these issues, Commerce will continue to create uncertainty for importers and domestic producers of steel and aluminum materials.

Finally, the agency has not assigned responsibility for reviewing the economic impact of tariffs, nor has it documented the results of any such reviews. By not doing so, Commerce will greatly limit its ability to provide the President with the accurate and complete information needed to make informed decisions on tariff implementation and adjustments to help the program achieve its objectives.

Recommendations for Executive Action

We are making the following three recommendations to Commerce:

The Secretary of Commerce should direct BIS to identify, analyze, and respond to factors in the process that may cause submission errors. (Recommendation 1)

The Secretary of Commerce should direct BIS to identify, assess, and make program changes to address issues that have impeded timeliness and created the backlog of exclusion requests. (Recommendation 2)

The Secretary of Commerce should assign responsibility for regularly reviewing the impact of the tariffs on steel and aluminum imports, including tariff exclusions, and document the results. (Recommendation 3)

Agency Comments

We provided a draft of this report to Commerce and DHS for review and comment. We received technical comments from both agencies, which we incorporated as appropriate. We also received written comments from the Secretary of Commerce on behalf of the Department that are reprinted in appendix VII. In its comments, Commerce concurred with all three of our recommendations. Commerce also provided additional information on actions it has taken related to issues we identified, which we incorporated as appropriate.

With regards to our first recommendation that the Secretary of Commerce should direct BIS to identify, analyze, and respond to factors in the process that may cause submission errors, Commerce concurred with this recommendation and said it has already taken action to reduce the number of rejected submissions during and after the period we examined. Commerce described changes it has made to reduce the number of rejected submissions including moving the HTS code review to the start of the process, creating the exclusion portal, and providing detailed e-mails to the requester for each rejected filing. As our report notes, even with these steps, as of January 21, 2020, Commerce had not yet significantly reduced submission errors. We found Commerce's improvements coincided with, according to Commerce data, a change of 2 percentage points in the overall rejection rate from Regulations.gov to the exclusion portal. At the same time, the proportion of rejected requests that Commerce rejected for non-HTS-related submission errors has increased from 27 percent in Regulations.gov to 43 percent in the exclusion portal. Commerce said it does keep a record of the reason for which it rejects each exclusion request, but has no consolidated file or statistical analysis of these reasons. Without a consolidated file or statistical analysis of these reasons, Commerce will not have a reasonable assurance that its actions will improve the process further and reduce these errors, which will continue to result in rejected requests, additional delays, reduced amounts of approved relief, and administrative burdens.

With regard to our second recommendation that the Secretary of Commerce should direct BIS to identify, assess, and make program changes to address issues that have impacted timeliness and created the backlog of exclusion requests, Commerce concurred with this recommendation and said it has addressed these deficiencies. Commerce stated that its new website, the exclusion portal, has improved overall average processing times for exclusion requests from 121 to 59 days, and that ITA has substantially streamlined its review process. Commerce's new website may have improved processing time in the preclearance and public comment phases of the process, but as our report notes, it may not fully address the lack of timeliness in the evaluation and recommendation and decision phases, especially for the subset of requests that receive an objection and require ITA evaluation. Commerce has not provided information showing that the steps it has taken have improved the timeliness and reduced the backlog of these undecided exclusion requests. As of August 27, 2020, in the exclusion portal, at least 30,000 requests were pending a decision from Commerce, about half of which have received objections and require ITA review.

Although Commerce may have improved the average rate at which it is able to decide individual exclusion requests so far, with no plan to reduce the size of the backlog, the agency will have challenges deciding the remaining requests and future requests received within its established timeliness guidelines.

With regard to our third recommendation that the Secretary of Commerce should assign responsibility for regularly reviewing the impact of the tariffs on steel and aluminum imports, including tariff exclusions, and document the results, Commerce concurred with this recommendation stating that it will complement and strengthen the Department's existing reporting. Commerce also elaborated on the activities multiple offices perform to provide data or analysis on steel and aluminum market conditions to the Secretary of Commerce. According to Commerce officials, the agency has taken steps to evaluate the impact of the tariffs. For instance, the Secretary's office examines the impact of the Section 232 tariffs on global overcapacity, U.S. industry, global, and domestic prices, and overall market conditions for downstream products (such as products that use steel and aluminum as material inputs). However, without assigning responsibility for reviews of the economic impact of tariffs and documenting their results, Commerce will be unable to ensure the consistency or quality of its reviews over time and may lack the information necessary to regularly assess the need for further action under Section 232.

We are sending copies of this report to the appropriate congressional committees, the Secretary of Commerce, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VIII.



Kimberly M. Gianopoulos
Director, International Affairs and Trade

List of Congressional Requesters

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

The Honorable Thomas R. Carper
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Doug Jones
United States Senate

The Honorable Pat Toomey
United States Senate

The Honorable Andy Barr
House of Representatives

The Honorable French Hill
House of Representatives

The Honorable Bill Pascrell
House of Representatives

The Honorable Jackie Walorski
House of Representatives

Appendix I: Objectives, Scope, and Methodology

In this report, we assess (1) the process the Department of Commerce (Commerce) uses to decide exclusion requests and to what degree it accepted submitted requests; (2) what criteria and factors affected Commerce's decisions; (3) how often Commerce met established guidelines for the timely resolution of exclusion requests; and (4) the extent to which Commerce reviewed the impacts of the tariffs on steel and aluminum imports, as directed.

To determine the process Commerce uses to respond to the tariff exclusion requests it receives, we reviewed Commerce's policies, plans, and related documents and conducted interviews with agency officials. We reviewed Interim Final Rules published by Commerce, in addition to both publically available Commerce documentation and internal Commerce documents and process manuals. We also spoke with officials from the Department of Homeland Security's Customs and Border Protection (CBP) to determine how they verified information related to the imported products' Harmonized Tariff Schedule of the United States (HTS) codes provided by requesters and excluded the imports from or refunded the duties, on steel and aluminum products. The process that we examined covered exclusion requests submitted through Regulations.gov from March 19, 2018, to June 12, 2019.

To determine the rates of rejection of exclusion requests for HTS code errors and submission errors we analyzed data provided directly from Commerce, the Federal Document Management System, or obtained through Regulations.gov. We compared rates of rejection for HTS code errors and submission errors from requests submitted to Regulations.gov with those from requests submitted to the exclusion portal between June 12, 2019, and January 21, 2020, by analyzing figures provided by Commerce. We used Standards for Internal Control in the Federal government to identify steps the agency should take to address the rate of rejections for exclusion requests.

To determine the amounts and types of tariff exclusion requests made by directly affected parties, and the factors that may have affected Commerce's decisions, we first analyzed policies, plans, and related documents and conducted interviews with agency officials to determine the criteria used to make decisions for tariff exclusion requests and how officials applied the criteria. We then obtained non-public agency records and available data on exclusion requests submitted through

Appendix I: Objectives, Scope, and Methodology

Regulations.gov from March 19, 2018, and June 12, 2019.¹ We chose this period as it provided the complete set of exclusion requests submitted to Regulations.gov prior to the initiation of the new exclusion portal.² The data we analyzed came either from Commerce or through Regulations.gov or the Federal Docket Management System. Using this data, we conducted an analysis generating statistics on various aspects of the process. In particular, we analyzed this data to understand the characteristics of exclusion requests and factors affecting decisions issued by Commerce. We presented data on the status of each request, for instance, whether the request was pending or decided, as of November 18, 2019. This analysis examined 92,527 steel and 13,628 aluminum exclusion requests, as shown in table 7.

Table 7: Universe of Steel and Aluminum Exclusion Requests Analyzed and the Outcome of Those Requests, as of November 18, 2019

Types of Submitted Exclusion Requests	Steel	Percentage	Aluminum	Percentage	Total	Percentage
Rejected	16,631	18.0	2,630	19.3	19,261	18.1
Withdrawn	870	.9	189	1.4	1,059	1.0
Accepted	75,026	81.1	10,809	79.3	85,835	80.9
Total:	92,527		13,628		106,155	
Outcome of Accepted Exclusion Requests						
Approved	48,672	64.9	7,798	72.1	56,470	65.8
Partial Approval ^a	105	.1	44	.4	149	.2
Denied Requests	18,733	25.0	1,060	9.8	19,793	23.1
Requests Pending Decision	7,516	10.0	1,907	17.6	9,423	11.0
Total:	75,026		10,809		85,835	

Source: GAO analysis of Regulations.gov data. | GAO-20-517

Notes: This table includes all exclusion requests submitted through Regulations.gov from March 19, 2018, and June 12, 2019. Percentages may not sum to totals due to rounding.

^aFor these exclusion requests, the Department of Commerce had approved less than the total amount requested for exclusion.

¹Commerce has used Regulations.gov, a pre-existing public comment system, to receive most exclusion requests and related information. Regulations.gov is a website established by the federal government that allows the public to find and submit comments on federal rules and other documents that are open for comment and published in the Federal Register. Commerce utilized Regulations.gov for public submissions from March 19, 2018, through June 12, 2019. As of June 13, 2019, Commerce launched a custom-built replacement exclusion portal that handles all exclusion requests filed on or after that date.

²<https://www.commerce.gov/page/section-232-investigations>.

We assessed steel and aluminum requests separately to identify potential differences between the two industries. We also analyzed objections, rebuttals, and surrebuttals posted in response to each exclusion request submitted before November 18, 2019.

We performed extensive electronic testing for errors in the data provided. For instance, we worked to identify instances of decisions, objections, and rebuttals posted before requesters had submitted the exclusion requests. We also tested electronically for outlier values in the applications themselves to find instances in which a recorded value was in pounds in one application but tons in another. Finally, we did an extensive manual examination of samples of the records at different points throughout the engagement to ensure reliability. We did not analyze exclusion requests Commerce had processed using its new exclusion portal, launched in June 2019, since at the time of our review Commerce had received 38,914 exclusion requests through the new portal but had only posted decisions for 12,054 of them as of November 17, 2019. We determined that there were not enough decisions posted to form an analyzable sample. We found these data obtained from Regulations.gov and from Commerce were sufficiently reliable for our purposes of generating statistics on various aspects of exclusion request process.

To determine the extent to which Commerce met established guidelines for the timely resolution of exclusion requests, we first reviewed agency documents and interviewed agency officials to identify and compile established guidelines for how long the agency should take to decide exclusion requests, both overall and within each phase. To do this we reviewed the September 11, 2018, Interim Final Rule³ and a Commerce procedure manual that contained established review timelines as well as deadlines for phases of the review process. We then compared the time Commerce took to make a decision for each exclusion requests against these timeliness guidelines to determine how often it met those guidelines. We used Standards for Internal Control in the Federal government to identify steps the agency should take to decide exclusion requests in a timely manner.

Furthermore, we analyzed data on the individual phases of the process to determine which phases required the most time. For the analysis examining the time an exclusion request spent in individual phases of the

³83 Fed. Reg. 46,026 (Sept. 11, 2018).

process, we calculated the time spent in a specified segment of the review process. We then compared the time spent in each specified segment of the review process with the established timeliness guidelines to assess how often Commerce met its guidelines. Due to limitations with Commerce data, for the portion of the analysis examining the timeliness of the phases, we examined only a subset of 11,005 steel and 2,193 aluminum exclusion requests to determine the average time Commerce spent in each phase of the process. These were submitted exclusion requests, with objections, that Commerce's International Trade Administration (ITA) had reviewed, for which the timeliness data concerning the evaluation and recommendation phase of the process were available. As a result, this portion of the analysis only examines the timeliness of approximately 15 percent (13,198 out of 85,835) of the exclusion requests submitted from July 1, 2018, to November 18, 2019.

We also examined Commerce's guidelines for posting materials online to determine whether Commerce met these guidelines. We did this by comparing the amount of time Commerce stated that it would take to post exclusion requests, objections, rebuttals, and surrebuttals to Regulations.gov to the amount of time it actually took to post these documents. Finally, we reviewed agency documents and spoke with officials from Commerce's Bureau of Industry and Security (BIS) and ITA to identify the factors that affected the timeliness of their decisions and the steps Commerce has taken to improve timeliness.

To examine the level of imports of steel and aluminum before and after the imposition of the Section 232 tariffs, we used publicly available U.S. Census import statistics for the HTS codes covered under the Section 232 proclamations. The data we downloaded are at the HTS-10 digit level. Since we found large surges in imports around the time Commerce announced the tariffs, we used several different periods when comparing monthly averages before and after the tariffs. For example, we made one comparison between a 12-month period just 3 months after the tariffs were put in place (June 2018 through May 2019) and a 12-month period right before (March 2017 and February 2018) so that the initial surges did not skew the averages. Comparisons using different periods produced similar results in terms of the general trends of steel and aluminum imports covered and not covered by the tariff after the imposition of the tariffs. Therefore, we determined these comparisons were reasonable.

To examine the amount of steel and aluminum imports for which importers paid Section 232 tariffs versus the imports for which they did not, we first identified different categories of imports for which those tariffs

were not paid. Then, we identified three different categories of imports on which the tariffs did not apply: those that BIS excluded from the tariffs, those from exempted countries, and those from quota countries. To identify imports for which importers paid tariffs, we used the rate provision code, a specific field contained in publically available Census trade data that flags imports subject to tariffs as outlined in Chapter 99 of the HTS schedule.⁴ CBP follows Chapter 99 of the HTS schedule to assess duties on imported products subject to Section 232 trade actions,⁵ as well as Section 301⁶ and Section 201⁷ trade actions. According to U.S. Census Bureau officials, a rate provision code equal to 69 or 79 from countries subject to the Section 232 tariffs in the publically available trade import statistics indicates imports subject to tariffs outlined in Chapter 99 of the HTS code.

The methodology of using the rate provision codes 69 or 79 to identify imports on which importers paid the tariffs has a few limitations. First, as the rate provision code does not specify whether the tariff assessed was due to the Section 232 steel and aluminum trade action, it is possible that rate provision codes were due to other tariffs. However, we examined the monthly data for all steel and aluminum products and found there were no imports with the tariff provision codes 69 or 79 before March 2018, when the Section 232 tariffs started. We also found that under 1 percent of imports of products covered by the Section 232 tariffs from exempt countries after March 2018 had rate provision codes 69 or 79, indicating that the codes were reasonable proxies for the Section 232 tariffs. Second, U.S. Census Bureau officials informed us that a data processing error could wrongly assign rate provision codes. However, this processing error affects less than 1 percent of all steel and aluminum import value on a monthly basis, which we determined would not materially affect our results. The information and observations described above provide a reasonable assurance that the import tariffs we identified are subject to the Section 232 tariffs.

⁴We downloaded the data from the website: dataweb.usitc.gov.

⁵Section 232 of the Trade Expansion Act of 1962. Pub. L. No. 87-794, Title II, § 232, 76 Stat. 872, 877 (codified as amended at 19 U.S.C. § 1862).

⁶Section 301 of the Trade Act of 1974. Pub. L. No. 93-618, tit. III, § 301, 88 Stat. 1978, 2041 (codified as amended at 19 U.S.C. § 2411).

⁷Section 201 of the Trade Act of 1974. Pub. L. No. 93-618, tit. II, § 201, 88 Stat. at 2011 (codified as amended at 19 U.S.C. § 2511).

To identify imports from exempted and quota countries, we examined the presidential proclamations on steel and aluminum imports to identify the periods when select countries were exempt either completely or with a quota. We then separately calculated the level of imports from these countries for steel and aluminum products covered by the tariffs. For instance, Canada and Mexico were exempt from the Section 232 tariffs before June 2018 and after May 2019. Furthermore, imports of steel from Argentina, Brazil, and South Korea after January 1, 2018, counted toward fulfillment of each country's quota.

To assess the import and domestic prices of steel and aluminum, we downloaded Bureau of Labor Statistics (BLS) import and producer price indices.⁸ BLS calculates these indices using price information from a set of establishments that trade steel or aluminum products in the United States. Due to the unavailability of price indices for steel and aluminum products covered by the Section 232 tariffs, we used the price indices for the general steel and aluminum products as proxies. Imports of steel and aluminum products subject to the tariffs could have additional spillover effects on similar steel and aluminum products not subject to the tariffs. The import price indices for steel and aluminum capture the price trends of the imported steel and aluminum products and the producer price indices for steel and aluminum capture the trends of the prices domestic producers of steel and aluminum receive. Theoretically, the imposition of import tariffs would lead to higher import and producer prices, holding all other factors constant. The base month of the monthly import and producer price indices is January 2017 and the analysis extends to January 2020. We decided to examine a 3-year trend of these indices to capture the trends in import and producer prices before and after the start of the Section 232 tariffs in March 2018.

To determine the extent to which Commerce reviewed the impacts of the tariffs on steel and aluminum imports, as directed, we examined Presidential Proclamations 9704 and 9705,⁹ and Commerce's Interim Final Rules of March 19, 2018, and September 11, 2018,¹⁰ to determine the Commerce requirements to conduct monitoring of imports and review

⁸We downloaded price indices data from the St. Louis Federal Reserve website: fred.stlouisfed.org.

⁹Proclamation No. 9704, 83 Fed. Reg. 11,619 (March 15, 2018); and Proclamation No. 9705, 83 Fed. Reg. 11,625 (March 15, 2018).

¹⁰83 Fed. Reg. 12,106 (Mar. 19, 2018) and 83 Fed. Reg. 46,026, as codified at 15 C.F.R. Part 705, Supp. No. 1 and No. 2.

of impacts of the tariffs including on downstream sectors. We further examined publically available and internal Commerce reports and related documents, and conducted interviews with relevant agency officials. We assessed this information against Standards for Internal Control in the Federal Government.

We conducted this performance audit from March 2019 to September 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Example of Exclusion Request Form for Section 232 Steel Tariffs

OMB Control Number: 0694-0139		Expiration Date: 4/30/2019	
Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports			
<p>Exclusion Request Requirements: Only individuals or organizations operating in the United States that use steel products (e.g. flat, long, semi-finished, pipe and tube, and stainless) in business activities (e.g., construction, manufacturing, supplying steel product to users) in the United States may submit an Exclusion Request. For an Exclusion Request to be considered, the Exclusion Requester must provide factual information on 1) the single type of steel product it requires using a 10-digit HTSUS code, including its specific dimension; 2) the quantity of product required (stated in kilograms) under a one-year exclusion; 3) a full description of the properties of the steel product it seeks to import, including chemical composition, dimensions, strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data. Exclusion Requests must be submitted using this Excel-based document. Paper submissions will not be accepted.</p> <p>A separate Exclusion Request must be submitted on each distinct type and dimension of steel product to be imported. All applicable question blocks in the form must be completed for the Exclusion Request to be accepted. Exclusion Requests will be denied if the applicant: 1) does not sufficiently address the specified reporting requirements; 2) cites the improper HTSUS code, or 3) provides incorrect product descriptions.</p> <p>Organizations electing to attach supporting documents must provide these documents in PDF format and it must not exceed 25 pages. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.</p> <p>Organizations should upload their completed Exclusion Request pertaining to a steel product to www.regulations.gov under Docket Number BIS-2018-0006. An Exclusion Request may be submitted at any time. Processing of an Exclusion Request will take approximately 90 business days. Notification of granted Exclusions will be posted on www.regulations.gov. For questions related directly to completing this form, contact BIS via email (steel232@bis.doc.gov) or telephone (202-482-5642).</p>			
1.a	Identify the class of steel product for which the Exclusion is sought:		10-Digit Harmonized Tariff Schedule Code of the United States (HTSUS) for the single steel product covered by this request: See <u>https://www.usitc.edu/</u>
1.b	Requesting Organization Information		Importer of Record for Organization Requesting an Exclusion
	Full Organization Legal Name		Full Organization Legal Name
	Street Address		Street Address
	City		City
	State		State
	Zip Code		Zip Code
	Headquarters Country		Headquarters Country
	Point of Contact Name		Point of Contact - Representative Name
	Phone Number		Phone Number
	E-mail Address		E-mail Address
Web Site Address		Web Site Address	
Parent Company of Requesting Organization		Requester's Authorized Representative/Agent (If applicable)	
Full Organization Legal Name		Requester Point of Contact Name	
Street Address		Point-of-Contact Organization	
City		Country Location	
State/Province		Phone Number	
Zip Code/Postal Code		E-mail Address	
Headquarters Country		Web Site Address	
Web Site Address		Other Information	
1.c	Does the parent organization hold ownership in (partially or completely), or is it otherwise engaged as a: Steel Manufacturer; Steel Distributor; Steel Exporter or, Steel Importer? If "Yes" identify the activity.		If "Yes" - Identify the organization Identify the country where the organization is headquartered
	Comments:		
1.d	Identify the primary type of steel activity of the Exclusion Requester:	Total Requested Annual Exclusion Quantity in Kilograms (1 metric ton = 1,000 kilograms)	
	Comments:		
<i>Continued on Next Page</i>			

**Appendix II: Example of Exclusion Request
Form for Section 232 Steel Tariffs**

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - Continued														
2.a	Average annual consumption for years 2015-2017 of the steel product that is subject of this Exclusion Request - Kilograms													
2.b	Explain why your organization requires an Exclusion using 1) the drop-down box to the right and 2) by providing written comments in the space provided below.													
	Comments:													
2.c	Identify the percentage of total steel product covered under this Exclusion Request not available from steel manufacturers in the United States:													
2.d	Estimate the number of days required to take delivery of the steel product covered by this Exclusion Request, from the time the purchase order is issued by your organization:													
2.e	Estimate the number of days required to manufacture the steel product covered by this Exclusion Request, from the time a binding purchase order is executed:													
2.f	Estimate the number of days required to ship the steel product covered under this Exclusion Request, from the foreign port of departure to the Exclusion Requester's loading dock:													
2.g	Estimate the number of distinct shipments from the foreign port(s) of departure that will be needed for transporting to the United States the steel product subject to this Exclusion Request:													
2.h	Identify the U.S. Destination Port(s) of Entry through which the steel product subject to this Exclusion Request would be transported:													
	Port 1	Port 2	Port 3	Port 4	Port 5	Port 6	Port 7							
	Is the organization making this Exclusion Request doing so on behalf of a non-U.S. steel producer that does not manufacture steel products in the United States?													
2.i	If "Yes" identify the non-U.S. steel producer													
	Identify the country where the organization is headquartered													
	Comments:													
Exclusion Request Product Information														
For this single Exclusion Request, provide a full, complete description of the product in the space provided below. * See explanation below. The product for which an Exclusion is being requested is defined as follows:														
2.j														
* With regard to the product for which an Exclusion is requested, such a description must be limited to a single product. The description must be limited solely to physical properties (e.g., chemical requirements, mechanical requirements, dimensions, etc.) and exact descriptive terms/phrases covering the product subject to the Exclusion Request (e.g., "hot-rolled," "seamless pipe," "suitable for use in boilers," "longitudinally submerged arc welded," etc.).														
All such physical properties must be defined based on actual, rather than nominal, measurements; references to specific dimensions (e.g., "cross-sectional diameter of 5.50 mm") or measurements (e.g., "yield strength of 300 MPa," "carbon content 0.08%," etc.) will be interpreted as meaning the exact dimension or measurement. Ranges (e.g., "cross-sectional diameter falling within the range 5.35 mm and 5.65 mm," "yield strength greater than or equal to 300 MPa," "carbon content less than or equal to 0.15%, by weight," etc.) are allowed. Where a range is needed, it should be identified based on the end points of the range (as in the examples above), rather than through references to absolute or percentage tolerances.														
	Comments:													
2.k	Identify the standards organizations that have set specifications for the product type that is the subject of this Exclusion Request, and provide the reference designation(s) for the identified standards organization(s), (e.g., ASTM A108-13):													
	1	Organization	Designation	3	Organization	Designation	5	Organization	Designation					
	2			4			6							
	Other (specify)			Other (specify)			Other (specify)							
General Steel Product Description														
Identify the classification and properties of the steel product covered under this Exclusion Request. Other classification or properties may be described in the Comment box below. (Select all that apply)														
2.l	Slab	Blooms	Billets	Ingots	Flat	Long	Beams	Semi-Finished	Pipe	Tube	Stainless	Wire	Hot Rolled	Cold Rolled
	Annealed	Plated	Electro-Plated	Galvanized	Electro-Galvanized	Zinc Plated	Aluminum Plated	Lead Plated	Tin Plated	Painted	Varnished	Plasticized	Pickled	Other (Use Comment Box)
	Comment:													
<i>Continued on Next Page</i>														

Appendix II: Example of Exclusion Request Form for Section 232 Steel Tariffs

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - <i>Continued</i>													
Identify the chemical composition of the specific steel product for which your organization seeks an Exclusion. Numbers may appear rounded, but full values will be stored.													
Chemical Composition													
Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Manganese	Molybdenum	Nickel
Minimum %													
Maximum %													
	Niobium	Nitrogen	Phosphorous	Selenium	Silicon	Sulfur	Tellurium	Titanium	Tungsten	Vanadium	Zirconium	[Other - List Below]	[Other - List Below]
Minimum %													
Maximum %													
Comments:													
Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) dimensional information for the single steel product and a single size – not a range of products and or sizes (e.g., 19 mm dia. rebar - not 19, 22, 25, and 29 mm.) A separate Exclusion Request must be submitted for each steel product by physical dimension; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.													
Steel Product Specifications (Millimeters)							Strength			Toughness (If Applicable)			
	Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear Testing	Impact (Charpy) Testing	Other (specify type in comment box)
Minimum										Temperature (°C)			
Maximum										Joules			
										% Shear			
Comments:													
Provide the following information on the single steel product that is the subject of this Exclusion Request: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.													
Global Ductility		Local Ductility (If Applicable)		Magnetic Permeability (If Applicable)			Surface Finish (If Applicable)	Coating Type and Composition (If Applicable)					
Elongation %	Reduction in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness [millimeter])	Magnetic Permeability [Epstein Test]	Magnetic Permeability [Greer Lab Method]	Stacked Wide Sheet [ASTM A804/ A804M-04 (2015)]	Profiometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]	
Minimum													
Maximum													
Select any additional processing methods used:										Other (specify)			
Comments:													
<i>Continued on Next Page</i>													

**Appendix II: Example of Exclusion Request
Form for Section 232 Steel Tariffs**

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - <i>Continued</i>						
List the Commercial Name(s) of the single steel product that is the subject of this Exclusion Request.						
4.a						
	Comments:					
State the 1) application for the steel product (e.g., automotive, appliances, industrial products, structural, etc.) that is the subject of this Exclusion Request, and 2) why similar steel products manufactured in the United States, if available, are not suitable.						
If the Exclusion is needed to support U.S. national security requirements (critical infrastructure or national defense systems), provide a detailed description of the specific uses of this single steel product in the space below:						
Identify the source countries for the single steel product for which the Exclusion is requested, the annual quantity to be supplied in kilograms, and the name of the current manufacturer(s) of the steel product. If this steel product is not obtained directly from the manufacturer, identify the current supplier(s) and the country of the supplier(s). The Exclusion Request, if granted, will pertain solely to the identified supplier(s) listed in this form and the country of origin. NOTE: Steel products encompassing more than one 10-digit HTSUS code must submit a separate Exclusion Request for each pertinent code.						
4.d		Country of Origin	Country of Export	Exclusion Quantity	Current Manufacturer	Current Supplier (if not obtained directly from manufacturer)
	1					
	2					
	3					
	4					
	5					
Product Availability Information						
Does the Requester possess knowledge of any domestic U.S. parties that <u>currently</u> manufacture the described steel product in the United States?						
Comment:						
Does the Requester possess knowledge of any parties that <u>currently</u> manufacture the described steel product in a country exempted from this tariff? If yes, identify the country or countries below.						
Comment:						
Is the Requester aware of any manufacturers <u>capable of producing</u> a substitute for the steel product in the United States? If "Yes" provide supporting information (name and address) in the space below?						
Comment:						
Has the Exclusion Requester attempted to <u>qualify any steel manufacturer in the United States</u> as a supplier of the steel product that is the subject of this Exclusion Request in the past two years? If "Yes" provide supporting information in the space below. Supporting documents must be submitted as a consolidated PDF file and may not exceed 25 pages.						
4.h	1		5			
	2		6			
	3		7			
	4		8			
	Comment:					
<i>Continued on Next Page</i>						

**Appendix II: Example of Exclusion Request
Form for Section 232 Steel Tariffs**

Request for Exclusion from Remedies: Section 232 National Security Investigation of Steel Imports - <i>Continued</i>	
5.a	Has the Exclusion Requester <u>attempted to purchase the described steel product</u> that is the subject of this Exclusion Request, or a substitute, from a U.S. manufacturer in the past two years? If "Yes" identify the manufacturers, addresses, and your points of contact at the U.S. steel manufacturing organizations in the space below. Comment: _____
5.b	Has the Exclusion Requester <u>had supply contracts, or does it have current contracts</u> , with steel producers that manufacture in the United States the steel product identified in the Exclusion Request? If "Yes" identify the U.S. steel manufacturers, addresses, and your points of contact at the U.S. manufacturing organizations in the space below. _____
5.c	Has the Exclusion Requester <u>determined that there is no U.S. manufacturer</u> that produces a near-equivalent steel product that would meet qualification requirements? If "Yes" identify in the space below the testing standards/procedures employed to make that determination (e.g., magnetic core loss, etc). Comment: _____
5.d	In the last two years, has the Requester purchased a <u>substitute steel product</u> manufactured in the United States in place of the steel product described in the Exclusion Request? If "Yes" provide supporting information in the space below. Comment: _____
5.e	Provide a detailed explanation as to how U.S. Customs and Border Protection (CBP) will be able to reasonably distinguish the steel product subject to the Exclusion Request at time of entry, without adding undue burden to their current entry system and procedures. _____
Submission of Exclusion Requests: All Exclusion Requests must be fully completed and submitted to www.regulations.gov under Docket Number BIS-2018-0006 using this Microsoft Excel electronic form. All information submitted will be subject to public disclosure, regardless of any statements by the Requester that some information should be treated otherwise. Any further information required as a part of this Exclusion Request will be determined and requested solely by the U.S. Department of Commerce.	
Submission of Supporting Documents (Attachments): Supporting attachments should be submitted to www.regulations.gov as PDF documents and must be posted to www.regulations.gov under Docket Number BIS-2018-0006. Total supporting submissions may not exceed 25 pages.	
Other Comments: _____	
This request is for a product from a country subject to quantitative limitations:	I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission: _____

Instruction: This Exclusion Request must be signed by an organization official specifically authorized to certify the document as being accurate and complete.			
CERTIFICATION			
The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction. [18 U.S.C. 1001 (1984 & SUPP. 1197)]			
Company Name:	_____		
Name of Authorizing Official:	_____	Title of Authorizing Official:	_____
Phone Number:	_____	Email of Authorizing Official:	_____
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.			
Point-of-Contact Name:	_____	Title	_____
E-mail Address:	_____	Phone Number	_____
Paperwork Reduction Act Notice			
Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0139. Commerce may not collect this information, and you are not required to respond, unless this OMB number is displayed.			

Appendix III: Example of Objection Form for Section 232 Exclusion Request

DMB Control Number: 0694-0138						Expiration Date: 4/30/2019						
Objection Filing to Posted Section 232 Exclusion Request: Aluminum												
<p>Objection Filing Requirements: Any individual or organization in the United States may file an Objection to an Exclusion Request. Where relevant, organizations must provide factual information on 1) the aluminum products that they manufacture in the United States, 2) the production capabilities at aluminum manufacturing facilities that they operate in the United States; and 3) the availability and delivery time of the products that they manufacture relative to the specific aluminum product that is subject to an Exclusion Request. For an Objection Filing to be considered, it must be submitted as an electronic document using this Excel-based template. Paper submissions will not be accepted.</p> <p>Organizations submitting an Objection Filing on an Exclusion Request should provide specific information, as relevant, on the product that their company can provide that is comparable to the aluminum product that is the subject of the Exclusion Request. This information should include 1) discussion on the suitability of its product for the application identified by the Exclusion Requestor, and 2) a full technical description of the properties of the product it manufactures relative to specifications provided in the Exclusion Request posted on regulations.gov, including information on dimensions, strength, toughness, ductility, surface finish, coatings, and other relevant data.</p> <p>A separate Objection Filing must be submitted on each Exclusion Request, citing the specific aluminum product and dimension covered in the request posted on regulations.gov. All applicable question blocks in this form must be completed for the Objection Filing to be accepted for consideration. Organizations electing to attach supporting documents must provide a single submission only in PDF format that must not exceed 25 pages in total. All information submitted in the Exclusion Request is subject to public disclosure. Do not provide sensitive Personally Identifiable Information.</p> <p>Organizations should upload their Objection Filing covering a single aluminum Exclusion Request to the corresponding Exclusion Request on https://www.regulations.gov/ under Docket Number BIS-2018-0002. An Objection Filing must be submitted to regulations.gov no later than 30 days from the date the Exclusion Request is posted in regulations.gov. Processing of the Exclusion Request, including consideration of Objection Filings, will take approximately 90 business days. When Exclusion Requests are approved, notification will be made on regulations.gov. For questions related directly to completing this form, contact BIS via email (aluminum232@bis.doc.gov) or telephone (202-482-4757).</p>												
<p>Instruction: State the name, address, and related contact information for the organization submitting the Objection Filing. Provide the same information for the Exclusion Requestor that is the subject of this Objection Filing, relying on information in the request notice posted on regulations.gov. Also provide the regulations.gov identification number issued for the submitter of the Exclusion Request, the HTSUS code for the aluminum product, and annual quantity of imported aluminum product at issue. This information is found in the Exclusion Request document posted on regulations.gov</p>												
Organization Filing Objection to Requested Exclusion												
Organization Requesting Exclusion												
1.a	Full Organization Legal Name				Full Organization Legal Name							
	Street Address				Street Address							
	City				City							
	State				State							
	Zip Code				Zip Code							
	Headquarters Country											
	Point of Contact Name											
	Phone Number											
	E-mail Address											
	Web Site Address											
regulations.gov identification #				10-Digit HTSUS Code		Annual Exclusion Quantity Requested (kilograms)						
<p>Identify the reasons your organization objects to an Exclusion Request being granted to the applicant cited above. Written comments may be submitted (not required) to supplement information that your organization has provided in the Objection Filing form on the Exclusion Request, but total attachments may not exceed 25 pages. Organizations making an Objections Filing should identify factual problems that they encounter in the Exclusion Request (e.g., product description).</p>												
<p>1.b Indicate what type of order the Exclusion Request that is the subject of the Objection Filing would pertain to:</p>												
<p>1.c Is the aluminum product type identified in the Exclusion Request currently manufactured by your organization in the United States, or can it immediately be made (within 8 weeks) by your organization, in a company-owned plant in the United States? If "yes" identify the location(s) of your aluminum production facilities in the United States.</p>												
<p>1.d This organization does not currently manufacture the identified aluminum product, but can produce the product identified in the Exclusion Request within the following time period at the following facilities:</p>												
<p>1.e Does this organization currently manufacture, or can immediately manufacture (within 8 weeks), in a company-owned plant located in the United States a substitute product for the identified aluminum product that has similar form, fit, function, and performance? If "yes" identify the location(s) of your aluminum production facilities in the United States, current plant capacity and utilization</p>												
<p>1.f This organization does not currently manufacture the identified aluminum product, but can make a substitute product that has similar form, fit, function, and performance within the following time period at the following facilities:</p>												
<p>Comments</p>												
Continued On Next Page												

Appendix III: Example of Objection Form for Section 232 Exclusion Request

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued														
2.a	Select "Yes" for any assertions identified in the Exclusion Request that your organization is challenging:			No Production Capacity			Product Quality			Shipping Time				
				Insufficient Volume			Unique aluminum Product			Other (specify here)				
2.b	Discuss 1) the suitability of your organization's aluminum product compared to that identified by the Exclusion Requestor, and 2) provide a full technical description of the properties of the product it manufactures relative to specifications cited in the Exclusion Request posted in regulations.gov. This description must include information on dimensions, plus performance factors such as strength, toughness, ductility, magnetic permeability, surface finish, coatings, and other relevant data.													
2.c	State the chemical composition of the specific aluminum product that your organization can manufacture at a company-owned production facility located in the United States. Numbers may appear rounded, but full values will be stored.													
	Chemical Composition													
	Chemical	Aluminum	Antimony	Bismuth	Boron	Carbon	Chromium	Cobalt	Copper	Iron	Lead	Magnesium	Manganese	Molybdenum
	Minimum %													
	Maximum %													
	Chemical	Nickel	Niobium	Phosphorous	Selenium	Silicon	Sulfur	Tin	Titanium	Tungsten	Vanadium	Zinc	[Other - List Below]	[Other - List Below]
	Minimum %													
Maximum %														
Comments:														
2.d	Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) dimensional information covering the single aluminum product subject to the Exclusion Request; 2) performance data for tensile strength, yield strength, hardness, impact, shear and test temperature. Numbers may appear rounded, but full values will be stored.													
	Aluminum Product Specifications (Millimeters)						Strength			Toughness (If Applicable)				
		Thickness	Inside Diameter	Outside Diameter	Length	Width	Height	Tensile Strength Mega Pascal (MPa)	Yield Strength Mega Pascal (MPa)	Hardness (specify method below - Brinnell, Rockwell, Vickers, etc.)	Test Type	Drop-Weight Tear-Testing	Impact (Charpy) Testing	Other (specify type in comment box)
	Minimum									Temperature (°C)				
	Maximum									Joules				
										% Shear				
	Comments:													
2.e	Provide the following information on the single aluminum product that is the subject of this Objection Filing: 1) performance data for ductility, magnetic permeability, surface finish; and 2) metal coating process, material type, weight, and thickness. Numbers may appear rounded, but full values will be stored.													
	Global Ductility			Local Ductility (If Applicable)		Surface Finish (If Applicable)			Coating Type and Composition (If Applicable)					
		Elongation %	Reduction -in-Area %	Hole Expansion %	Bendability (Bend Radius/Sheet Thickness) [millimeter]				Profilometer - [SAE J911]	Coating Method	Coating Product Name and Abbreviation	Composition (e.g., Zn, Al, Si, Mg, other intentionally added elements or alloys)	Weight [Grams per Sq. Meter]	Coating Thickness [micrometers]
	Minimum													
	Maximum													
	Select any additional processing methods used:										Other (specify)			
	Comments:													

Continued On Next Page

**Appendix III: Example of Objection Form for
Section 232 Exclusion Request**

Objection Filing to Posted Section 232 Exclusion Request: Aluminum - Continued	
3.a	What percentage of the total aluminum product tonnage requirement covered under the Exclusion Request that is the subject of this Objection Filing can your organization manufacture at its U.S. plants on a timely basis?
3.b	State the number of days required by your organization to ship from its U.S. manufacturing plant the aluminum product covered by this Exclusion Request from the time the purchase order is received:
3.c	State the number of days required to manufacture the aluminum product covered by this Exclusion Request from the time a binding purchase order is received:
3.d	State the delivery time in days for the aluminum product covered under this Exclusion Request from the time it is shipped from your manufacturing plant to the Exclusion Requestor's loading dock:
	Comments: <input style="width: 95%;" type="text"/>
3.e	Identify the reasons your organization objects to an Exclusion Request being granted to the applicant. Written comments may be submitted (not required) for each of the reasons your organization has cited in the Objection Filing form. Organizations filing Objections should identify factual problems in the Exclusion Request (e.g., product description).
	Comments: <input style="width: 95%;" type="text"/>
3.f	Has the organization making the Exclusion Request asserted that there is no capability in the United States to manufacture this type of aluminum product it requires? If "Yes" provide comments in the space below. Has the Exclusion Requestor supported its assertion of product uniqueness with engineering and scientific data, or independent laboratory tests results? Does your organization have technical data to disprove the assertions of the Exclusion Requestor? If "Yes" provide comments in the space below, or in attachments.
	Comments: <input style="width: 95%;" type="text"/>
3.g	Has the organization making this Objection Filing within the last two years attempted to sell, or successfully sold, the aluminum product described in the Exclusion Request to the exclusion requestor previously? Does your organization manufacture a aluminum product similar to that cited in the Exclusion Request for which it has asked to Exclusion Requestor, within two years of the filing of the Exclusion Request, to perform a formal technical qualification to determine equivalency in form, fit, function and performance? Did the Exclusion Requestor accept or reject the request to perform a formal technical qualification?
	Comments: <input style="width: 95%;" type="text"/>
	I have additional information to provide that is proprietary or otherwise business confidential that is relevant and necessary to this submission: <input style="width: 95%;" type="text"/>
Instruction: This Objection Filing must be submitted by an organization official authorized to certify the document as being accurate and complete.	
CERTIFICATION	
The undersigned certifies that the information herein supplied in response to this questionnaire is complete and correct to the best of his/her knowledge. It is a criminal offense to willfully make a false statement or representation to any department or agency of the United States Government as to any matter within its jurisdiction. [18 U.S.C. 1001 (1984 & SUPP. 1197)]	
Company Name:	<input style="width: 95%;" type="text"/>
Name of Authorizing Official:	<input style="width: 40%;" type="text"/> Title of Authorizing Official <input style="width: 55%;" type="text"/>
Phone Number:	<input style="width: 30%;" type="text"/> Email of Authorizing Official: <input style="width: 65%;" type="text"/>
If the Point of Contact is different from the Authorizing Official provide point-of-contact information below.	
Point-of-Contact Name:	<input style="width: 60%;" type="text"/> Title <input style="width: 40%;" type="text"/>
E-mail Address:	<input style="width: 60%;" type="text"/> Phone Number <input style="width: 40%;" type="text"/>
Paperwork Reduction Act Notice	
Per the Paperwork Reduction Act of 1995, public reporting burden for this collection of information is estimated to average 4 hours per response, including the time to review instructions, search existing data sources, gather and maintain data needed, and complete and review the collection of information. Send comments regarding this burden estimate or any other aspects of this collection of information, to 1401 Constitution Avenue, NW, HCHB 1093, Office of Technology Evaluation, Bureau of Industry and Security, U.S. Department of Commerce, Washington, DC 20230 attn: 0694-0138. Commerce may not collect this information, and you are not required to respond, unless this OMB number is displayed.	

Appendix IV: Outcomes of Steel and Aluminum Exclusion Requests Accepted through Regulations.gov

Table 8: Total Number and Decision Outcomes of Steel and Aluminum Exclusion Requests Accepted by the Department of Commerce through Regulations.gov by Harmonized Tariff Schedule (HTS) Category, as of November 18, 2019

Steel HTS by Category	Total Number of Requests	Approved	Denied	Pending
Tubes pipes, and hollow profiles	27,971	15,658	8,194	4,119
Bars and rods	22,502	17,465	3,554	1,483
Flat-rolled products	9,988	6,119	3,166	703
Products of stainless steel	8,569	6,073	1,546	950
Wire	4,327	3,188	1,053	86
Ingots, other primary forms and semi-finished products	932	36	767	129
Tubes and pipes	429	198	203	28
Angles shapes and sections	121	19	94	8
Other	98	7	89	2
Rails	77	14	55	8
Sheet piling	12	0	12	0
Total	75,026	48,777	18,733	7,516

Aluminum HTS by Category	Total Number of Requests	Approved	Denied	Pending
Plates, sheets, and strip	5,916	3,727	537	1,652
Foil	2,310	1,920	280	110
Bars, rods and profiles	1,415	1,273	44	98
Tubes, pipes and tube or pipe fittings	812	796	9	7
Unwrought aluminum	276	109	150	17
Wire	38	12	10	16
Other	37	0	30	7
Castings and forgings of aluminum	5	5	0	0
Total	10,809	7,842	1,060	1,907

Source: GAO analysis of Regulations.gov data. | GAO-20-517

Notes: The steel categories listed in this table are steel product categories subject to the Section 232 tariffs, as indicated in Presidential Proclamation 9705. Proclamation No. 9705, 83 Fed. Reg. 11,625 (March 15, 2018). The "other" category contains 98 steel requests that contained HTS codes not included within Presidential Proclamation 9705. The total number of bars and rods approved include 83 partially approved requests. The total amount number of wire approved include 22 partially approved requests. The aluminum categories listed in this table are aluminum product categories subject to the Section 232 tariffs as indicated in Presidential Proclamation 9704. Proclamation No. 9704, 83 Fed. Reg. 11,619 (March 15, 2018). The "other" category contains 37 aluminum requests that contained HTS codes not included within Presidential Proclamation 9704. The total number of approved plates, sheets, and strip include 44 partially approved requests.

Appendix V: Country of Origin and Outcomes and Steel and Aluminum Exclusion Requests as of November 18, 2019

We also reviewed the stated country of origin for requested products and found that products from five countries comprised the majority of approved steel and aluminum exclusion requests submitted through Regulations.gov.¹ Requesters must specify the country of origin of the product for which they wish to obtain exclusion. If approved, the exclusion is valid for steel and aluminum products imported by that requester from that country. Requesters may provide information on multiple countries of origin if importing the same product from different locations but exclusion is only valid for the countries listed in the request. For example, we found that as of November 18, 2019, requesters listed 55 different countries of origin 110,594 times within 75,024 steel requests submitted through Regulations.gov. Japan, China, Austria, Spain, and Sweden accounted for the country of origin for 59 percent of the countries listed in steel exclusion requests (65,693 out of 110,594). These countries accounted for the country of origin for 61 percent of the approved steel exclusion requests (45,273 out of 73,805), as seen in table 9.²

Table 9: Outcome of Steel Exclusion Requests Submitted through Regulations.gov Sorted by Country of Origin, as of November 18, 2019

Country	Total	Approved ^a	Denied ^b	Pending
(1) Japan	18,268	11,953	4,461	1,854
(2) China	15,617	11,052	3,146	1,419
(3) Austria	12,263	9,521	1,261	1,481
(4) Spain	11,302	5,750	3,722	1,830
(5) Sweden	8,243	6,997	551	695
Subtotal	65,693	45,273	13,141	7,279
Other countries	44,901	28,532	12,384	3,985
Total for All Countries	110,594	73,805	25,525	11,264

Source: GAO analysis of Regulations.gov data. | GAO-20-517

Notes: The total number of occurrences refers to the number of times a country appeared within the exclusion requests. Requesters may list multiple countries on one request.

^aApproved includes exclusion requests that received partial approval from the Department of Commerce (Commerce).

^bDenied includes exclusion requests that received rejections from Commerce.

¹In implementing approved exclusion requests, CBP does not apply Section 232 tariffs to products imported from the countries of origin listed in the approved request.

²We did not include requests with technical errors for products from a country where the tariff did not apply.

**Appendix V: Country of Origin and Outcomes
and Steel and Aluminum Exclusion Requests
as of November 18, 2019**

As of November 18, 2019, requesters listed 54 countries of origin 20,358 times in 10,809 aluminum exclusion requests. China, Canada, Germany, India, and Italy accounted for 46 percent of the countries of origins listed in aluminum requests (9,277 out of 20,358). These countries accounted for 51 percent of the countries of origin in approved aluminum exclusion requests (6,702 out of 13,240), as seen in table 10.

Table 10: Outcome of Aluminum Exclusion Requests Submitted through Regulations.Gov Sorted by Country of Origin, as of November 18, 2019

Country	Total	Approved ^a	Denied ^b	Pending
(1) China	2,705	1,877	177	651
(2) Canada	1,789	1,631	98	60
(3) Germany	1,666	1,218	114	334
(4) India	1,584	1,144	103	337
(5) Italy	1,533	832	84	617
Subtotal	9,277	6,702	576	1,999
Other countries	11,081	6,538	1,006	3,537
Total for All Countries	20,358	13,240	1,582	5,536

Source: GAO analysis of Regulations.gov data. | GAO-20-517

Notes: The total number of occurrences refers to the number of times a country appeared within the exclusion requests. Requesters may list multiple countries on one request.

^aApproved includes exclusion requests that received partial approval from the Department of Commerce (Commerce).

^bDenied includes exclusion requests that received rejections from Commerce.

Appendix VI: Steel and Aluminum Imports by Section 232 Tariff Status, March 2018 to January 2020

Through two presidential proclamations released on March 8, 2018, the President placed tariffs of 25 percent on imports of select steel products and of 10 percent on imports of select aluminum ones.¹ The two proclamations also authorized the Secretary of Commerce (Commerce) to establish a process to provide relief from the tariffs to eligible parties located in the United States.² In addition, imports of steel and aluminum from certain countries were exempt from the tariffs. Imports from these exempted countries were either subject to or not subject to a quota.³ With these policies and actions, imports of steel and aluminum products had a different tariff status. We examined the import values and quantities for steel and aluminum products in the proclamations by their tariff status.

Tables 11 and 12 respectively show total imports for steel and aluminum products covered under the tariff divided into the following categories using publically available U.S. Census trade statistics based on the product's tariff status:

1. No Tariff Paid:
 - From non-exempt and non-quota countries. This category includes imports granted exclusion from the Bureau of Industry and Security.⁴
 - From quota countries. This category includes imports from countries subject to Section 232 steel and aluminum quotas.

¹Proclamation No. 9704, 83 Fed. Reg. 11,619 (Mar. 15, 2018) and Proclamation No. 9705, 83 Fed. Reg. 11,625 (Mar. 15, 2018).

²Commerce established additional public guidance for the process including two interim final rules, one published in the Federal Register on March 19, 2018, and the other on September 11, 2018. 83 Fed. Reg. 12,106 (Mar. 19, 2018) and 83 Fed. Reg. 46,026 (Sept. 11, 2018). Commerce codified these interim final rules at 15 C.F.R. Part 705, Supp. No. 1 and No. 2.

³For the purpose of the report, "exempt countries" are countries with an exemption and not subject to a quota and "quota countries" are countries with an exemption and subject to a quota.

⁴According to Census, if importers receive the tariff exclusion after importation and file a Post-Summary Correction to receive a refund of the tariffs paid, the revised trade statistics will reflect the refund. However, according to Census there are cases where importers do not need to file a Post-Summary Correction to receive the refund. Therefore, the revised trade statistics will not reflect all of the refunds. Additionally, we downloaded the data for this report before the 2020 revision, which covers trade statistics in 2019. Thus, the 2018 trade data we used have been revised to reflect tariff exclusion refunds from Post-Summary Corrections, but the 2019 and 2020 trade data have not.

Appendix VI: Steel and Aluminum Imports by Section 232 Tariff Status, March 2018 to January 2020

- From exempted countries. This category includes imports from countries exempted from the tariffs without a quota.

2. Tariff Paid:

- From non-exempt and non-quota countries. This category includes steel and aluminum imports for which domestic importers paid the Section 232 tariff.⁵

Table 11: Steel Imports by Section 232 Tariff Status from U.S. Census Trade Statistics, March 2018 to January 2020

Status of import Tariff	Value imported in billions (U.S. dollars)	Percent of total imports by value	Quantity imported in billions of kilograms	Percent of total imports by quantity
No tariff paid	24.90	49	28.74	53
From non-exempt and non-quota countries ^a	5.10	10	4.67	9
From quota countries ^b	9.73	19	13.15	24
From exempted countries ^c	10.07	20	10.93	20
Tariff paid ^d	25.63	51	25.30	47
Total	50.53	100	54.04	100

Source: GAO analysis of U.S. Census Trade Statistics | GAO-20-517

Notes: We calculated values and quantities using the total of steel product imports covered by the Section 232 steel tariffs. The products covered by the steel tariffs are listed in Presidential Proclamation 9705 issued on March 8, 2018, that announced the imposition of the Section 232 tariffs. Chapter 99 of the Harmonized Tariff Schedule (HTS) outlines the applicable tariffs for those products. Using the publically available Census import data, we were able to measure the value of Chapter 99 dutiable steel imports for each product listed in the presidential proclamation announcing the steel tariffs. In addition, we used more recently issued presidential proclamations that adjusted steel imports to identify when select countries were exempted from paying duties related to the steel tariff. According to Census officials, they do not account for retroactive relief in the Census public trade statistics, suggesting that the true level of imports coming under exemption could be higher and the imports subject to tariffs potentially lower. Finally, due to a programming error in Census's data compilation procedures, the data may misclassify a small fraction of steel import transactions as exempt or subject to tariff. Therefore, the figures we present here may have some margin of error. Numbers may not sum exactly due to rounding.

^aThis category represents the total imports of steel products covered by the Section 232 tariffs for which importers did not pay Chapter 99 duties from countries subject to the 232 steel tariffs. We therefore assume the Bureau of Industry and Security (BIS) likely granted exclusion for these imports.

⁵This is the total of imported steel products, covered by the Section 232 tariff, for which domestic importers paid Chapter 99 duties. Since Chapter 99 of the Harmonized Tariff Schedule (HTS) describes Section 232 tariffs, these imports were likely subject to the tariff. However, this estimate could include imports that were subject to a different Chapter 99 tariffs, such as the Section 301 tariffs on imports from China. The data do not allow us to determine whether these were Section 232 or Section 301 tariffs, thus these figures are estimates.

Appendix VI: Steel and Aluminum Imports by Section 232 Tariff Status, March 2018 to January 2020

^bThis category represents imports from countries subject to Section 232 steel quotas. Countries subject to steel quotas are Brazil, Argentina, and South Korea. Importers can import a limited amount of steel products covered by the Section 232 tariffs from countries subject to a quota free from the Section 232 tariffs. Imports after January 1, 2018, count toward fulfillment of the quota. Since September 2018, importers could apply for waivers from the quota allowing them to import beyond the limit from these countries. Imports brought in under an exclusion from the quota are not subject to the Section 232 tariffs. According to the BIS request data, we estimate that BIS approved waivers for Argentina for roughly 548 million kilograms of steel, Brazil for 906 million kilograms, and South Korea for 849 million kilograms since September 2018.

^cCountries currently exempt from the Section 232 steel tariffs are Canada, Mexico, and Australia. Canada and Mexico were subject to Section 232 tariffs between June 2018 and May 2019 and exempt before June 2018. Australia has been exempt from the Section 232 tariff since March of 2018. Countries in the European Union were subject to the Section 232 Steel tariff after June 1, 2018, and were exempt between March and May 2018.

^dThis is the total of imported steel products covered by the Section 232 tariff for which domestic importers paid Chapter 99 duties. Since Chapter 99 of the HTS describes Section 232 tariffs, these imports were likely subject to the Section 232 tariff. However, this estimate could include imports excluded from the Section 232 tariffs, but subject to duties under another Chapter 99 tariff. Therefore, these figures are estimates.

Table 12: Aluminum Imports by Section 232 Tariff Status from U.S. Census Trade Statistics, March 2018 to January 2020

Status of import Tariff	Value imported in billions (U.S. dollars)	Percent of total imports by value	Quantity imported in billions of kilograms	Percent of total imports by quantity
No Tariff Paid	11.79	38	4.61	40
From non-exempt and non-quota countries ^a	2.94	9	1.03	9
From quota countries ^b	0.82	3	0.34	3
From exempted countries ^c	8.04	26	3.24	28
Tariff paid ^d	19.28	62	6.83	60
Total	31.12	100	11.45	100

Source: GAO analysis of U.S. Census Trade Statistics | GAO-20-517

Notes: We calculated values and quantities using the total of aluminum product imports covered by the Section 232 aluminum tariffs. The products covered by the aluminum tariffs are listed in Presidential Proclamation 9704 issued on March 8, 2018, that announced the imposition of the Section 232 tariffs. Chapter 99 of the Harmonized Tariff Schedule (HTS) outlines the applicable tariffs for those products. Using the publically available Census import data, we were able to measure the value of Chapter 99 dutiable aluminum imports for each product listed in the presidential proclamation announcing the aluminum tariffs. In addition, we used more recently issued presidential proclamations that adjusted aluminum imports to identify when select countries were exempted from paying duties related to the aluminum tariff. According to Census officials, they do not account for retroactive relief in the Census public trade statistics, suggesting that the true level of imports coming under exemption could be higher and the imports subject to tariffs potentially lower. Finally, due to a programming error in Census's data compilation procedures, the data may misclassify a small fraction of aluminum import transactions as exempt or subject to tariff. Therefore, the figures we present have some margin of error. In addition, the lack of detail in the Census's public trade statistics for aluminum may create additional estimation bias. According to the Peterson Institute for

**Appendix VI: Steel and Aluminum Imports by
Section 232 Tariff Status, March 2018 to
January 2020**

International Economics, both the Section 232 and Section 301 tariffs could cover some aluminum products. Tariffs for goods subject to the Section 301 tariffs are also found in Chapter 99 of the HTS. According to Census officials, these products could be subject to both tariffs after August 2019. Assuming that all Chapter 99 dutiable aluminum products imported from China after August 2019 are subject to Section 301 tariffs and excluded from Section 232 tariffs, the upper limit on the potential level of estimation bias for imports subject to Section 232 tariffs is approximately \$240 million. Therefore, the figures we present could overestimate and underestimate the likely level of imports subject to and excluded from the Section 232 tariff. Numbers may not sum exactly due to rounding.

^aThis category represents the total imports of aluminum products covered by the Section 232 tariffs for which importers did not pay Chapter 99 duties from countries subject to the 232 aluminum tariffs. We therefore assume the Bureau of Industry and Security (BIS) likely granted exclusion for these imports. Given our level of potential estimation bias due to the overlap between Section 232 and 301 tariffs described above, the likely level of import value in this category is between \$2.94 billion and \$3.18 billion.

^bThis category represents imports from countries subject to Section 232 aluminum quotas. Argentina is subject to aluminum quotas. Importers can import a limited amount of aluminum products covered by the Section 232 tariffs from countries subject to a quota free from the Section 232 tariffs. Imports after January 1, 2018, count toward fulfillment of the quota. Since September 2018, importers could apply for waivers from the quota allowing them to import beyond the limit from these countries. Imports brought in under an exclusion from the quota are not subject to the Section 232 tariffs. According to the BIS request data, we estimate that BIS approved a waiver for Argentina for roughly 2.5 million kilograms of aluminum since September 2018.

^cThis category represents imports from countries exempt from the Section 232 aluminum tariffs. Countries currently exempt from the Section 232 aluminum tariffs are Canada (except for non-alloyed unwrought aluminum under HTS subheading 7601.10), Mexico, and Australia. Canada and Mexico were subject to Section 232 tariffs between June 2018 and May 2019 and exempt before June 2018. Australia has been exempt from the Section 232 tariff since March 2018. Countries in the European Union were subject to the Section 232 aluminum tariff after June 1, 2018, and were exempt between March and May 2018.

^dThis is the total of imported aluminum products covered by the Section 232 tariff for which domestic importers paid Chapter 99 duties. Since Chapter 99 of the HTS describes the Section 232 tariffs, these imports were likely subject to the tariff. However, this estimate could include imports excluded from the Section 232 tariff, but subject to duties under another Chapter 99 tariff. Given the level of potential estimation bias due to the overlap between Section 232 and 301 tariffs described above, the likely level of import value in this category is between \$19.28 billion and \$19.52 billion.

Appendix VII: Comments from the Department of Commerce



UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

August 20, 2020

Ms. Kimberly Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Gianopoulos:

Thank you for the opportunity to review the Government Accountability Office's (GAO) draft report, *Steel and Aluminum Tariffs: Commerce Should Improve Its Exclusion Request Process and Economic Impact Reviews* (GAO-20-517, August 2020).

We agree with the three recommendations for the Department of Commerce. I would like to note that the Section 232 Exclusions Portal, which was implemented in June 2019, has substantially addressed the first two recommendations. The Bureau of Industry and Security and the International Trade Administration will each submit technical edits in response to their review of the draft report. We look forward to receipt of the final report and will follow up as needed.

Should you have further questions, please contact Anthony Foti, Performing the Delegated Duties of the Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

A handwritten signature in black ink that reads "Wilbur Ross".

Wilbur Ross

**Appendix VII: Comments from the Department
of Commerce**

**Department of Commerce's Comments on
GAO Draft Report entitled *Steel and Aluminum Tariffs: Commerce Should Improve Its
Exclusion Request Process and Economic Impact Reviews (GAO-20-517)***

The Department of Commerce has reviewed the draft report, and we offer the following comments for GAO's consideration.

General Comments

The Department agrees with the three recommendations and would note the Department has substantially addressed the first two recommendations with the implementation of the Section 232 Exclusions Portal in June 2019. This progress is not currently reflected in the report.

Comments on the Recommendations

The Government Accountability Office (GAO) made three recommendations to the Department in the report.

- **Recommendation 1.** The Secretary of Commerce should direct BIS to identify, analyze, and respond to factors in the process that may cause submission errors.

Commerce Response: The Department concurs with this recommendation and has already taken action to reduce the number of rejected submissions during and after the period cited by GAO.

1. Customs and Border Protection (CBP) moved its review of the Harmonized Tariff System of the United States (HTSUS) code to the start of the 232 exclusion process to eliminate denials due to HTSUS code errors by requestors.
2. The 232 Exclusions Portal further reduces the rate of errors by providing a template that allows automatic filling of some data fields and prevents submissions lacking priority or required fields.
3. The Department provides a detailed email to the requestor of each rejected filing outlining the specific items which must be corrected in the filing.

The Department does keep a record of the reason(s) for which it rejects each exclusion request. While there is no consolidated file or statistical analysis of these reasons, the Department is aware of and is attempting to address the most common submission errors. The Department is considering potential rule changes to address the most common submission errors as well.

- **Recommendation 2:** The Secretary of Commerce should direct BIS to identify, assess, and make program changes to address issues that have impacted timeliness and created the backlog of exclusion requests.

Commerce Response: The Department concurs with this recommendation and has already addressed these deficiencies.

**Appendix VII: Comments from the Department
of Commerce**

After the launch of the 232 Exclusions Portal - which postdates the GAO audit - average processing times for exclusion requests dropped from 121 to 59 days due to automation of processes alone. Further, BIS continues to improve this metric by dedicating more staff to the exclusion process and holding weekly (with ITA) and monthly (with CPB) coordination meetings.

Recommendation 3: The Secretary of Commerce should assign responsibility for regularly reviewing the impact of the tariffs on steel and aluminum imports, including tariff exclusions, and document the results.

Commerce Response: The Department agrees with this recommendation. The Department plans to adopt GAO's recommendation 3, as it will complement and strengthen the Department's existing reporting. Presently, the Secretary's office receives reports and data relating to the impacts of tariffs on a regular basis to probe the impact of the Section 232 tariffs on global overcapacity, U.S. industry, global and domestic prices, and overall market conditions for downstream products (i.e., products that use steel and aluminum as material inputs). Multiple offices within the Department contribute data or analysis on steel and aluminum market conditions to the Secretary.

First, in coordination with Department staff, including staff at ITA's Industry & Analysis (I&A) unit and Import Monitoring and Analysis Unit (housed within Enforcement and Compliance), the Secretary monitors monthly import volumes of steel and aluminum to determine import increases and decreases overall and broken down by country. These data are then used to evaluate the impact on steel and aluminum prices and capacity utilization in the United States. Country-specific production conditions are also probed deeper when import increases are identified to evaluate the possibility of tariff/quota circumvention.

Second, the Secretary and his staff, with the assistance of the Assistant Secretary of I&A and I&A staff, examine the downstream impact of the Section 232 tariffs/quotas on products using steel and aluminum as material inputs. The impact is measured through an examination, on a sector-by-sector basis, of employment, production, import and export data. These data are shared with the Secretary's office for review.

Third, the Assistant Secretary examines and provides to the Secretary's office the prices of steel and aluminum in the United States versus global prices as a part of the ongoing assessment of global overcapacity's depression of worldwide prices. Because global overcapacity has put downward pressure on world prices, imports of certain downstream products that use steel and aluminum as material inputs have increased. The Secretary, the Assistant Secretary, and staff had monitored imports of these downstream products, at the Secretary's direction, in 2019 to determine whether import increases have impacted domestic prices, wages, revenue, and employment, as well as production.

The Department's BIS monitors the exclusion process for steel and aluminum imports, compiling data on the number of applications and the products for which importers are seeking exclusions and the ability of U.S. steel and aluminum manufacturers to produce those products

**Appendix VII: Comments from the Department
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for the downstream customer. Every week, BIS provides the Secretary's office with 232 exclusion request processing statistics for review.

The Secretary meets with steel/aluminum producers and members of downstream industries to obtain information and data regarding changing market conditions. This information helps to inform the Secretary's understanding of overcapacity in the global markets, how countries are responding, and the resultant impacts on U.S. producers. In order to help keep the Secretary informed of industry developments, the Assistant Secretary attends annual industry conferences (to date, in the fall of 2018 and again in the fall of 2019) to further evaluate – through direct engagement with experts in the industry – how the Section 232 tariffs/quotas have impacted domestic and worldwide production and competition. Moreover, staff in ITA and BIS regularly track industry news publications in order to keep Commerce leadership up to date on competitive conditions in the steel and aluminum sectors.

Census Bureau and Bureau of Economic Analysis (BEA) the Department's two statistical agencies contribute foundational statistical data on economic conditions and trade flows for the steel and aluminum industries and across the economy to the Secretary's office.

Appendix VIII: GAO Contact and Staff Acknowledgments

GAO Contact

Kimberly M. Gianopoulos, (202) 512-8612, GianopoulosK@gao.gov

Staff Acknowledgments

In addition to the contact named above, Adam Cowles (Assistant Director), Anthony Costulas (Analyst-in-Charge), Christopher Allison, James Boohaker, Ming Chen, Chris Keblitis, Grace Lui, Sam Portnow, Joe Recht, Aldo Salerno, and Andrew Titmus made key contributions to this report.

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